
Judicial Controls and the Civil Litigative Process: Motions

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JUDICIAL CONTROLS AND THE CIVIL LITIGATIVE PROCESS: MOTIONS

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This publication is a product of a study undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the authors. This work has been subjected to staff review within the Center, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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The efficacy of alternative procedures for the handling of motions can be evaluated by employing ruling time as a measure of performance. Ruling time is defined as the total elapsed time from the filing of a motion to the entry of a court order.

Our six sampled courts can be distinguished according to the extent that their motions were handled by motions-day procedures as opposed to ad hoc procedures. Although no court exclusively used one or the other procedure, Eastern Louisiana and Central California had local rules making the moving party responsible for scheduling oral proceedings on a weekly motions day and Southern Florida, Massachusetts, Maryland, and Eastern Pennsylvania judges considered the need for oral proceedings on a motion-by-motion basis using personal scheduling techniques.

The extent of opinion drafting in a court also affects ruling-time performance. Measuring court drafting practices permitted an additional classification of the courts to account for this factor in the analysis. Drafting was found to be minimal in Eastern Louisiana, Central California, and Southern Florida and substantial in Massachusetts, Maryland, and Eastern Pennsylvania.

Using these two measures, Eastern Louisiana and Central California were classified as motions-day/minimal-drafting courts; Southern Florida was classified as a written-submissions/minimal-drafting court; and Massachusetts, Maryland, and Eastern Pennsylvania were classified as written-submissions/substantial-drafting courts.

Overall Ruling Times. Mean ruling times varied from 27.4 days in Eastern Louisiana to 92.0 days in Maryland. The manner in which a court implements procedures and its drafting burden have a demonstrable effect on ruling-time performance. Less clear is the influence of motions-day and written-submissions procedures on ruling times.

The Written-Submissions Track. Local rule deadlines for opposition briefs and the degree of adherence to those deadlines accounted for substantial differences among the courts in mean opposition-brief time--the elapsed time from the filing of the motion to the filing of the opposition brief. The range among written-submissions courts was from 12.2 days in Southern Florida to 38.4 days in Massachusetts. Shorter rule deadlines and closer monitoring of deadlines would help reduce this disparity.

The time that judges deliberated on written-submissions motions varied among the written-submissions courts from 34.6 days in Southern Florida to 139.5 days in Eastern Pennsylvania. Writing opinions extended ruling times on the motions receiving opinions as well as the motions awaiting simple ruling orders.

The Oral-Proceedings Track. The self-enforcing nature of motions-day procedures encourages the scheduling of oral proceedings simultaneously with the filing of motions, resulting in simultaneous schedulings for over 90 percent of the motions in Eastern Louisiana and Central California. In the remaining courts, judges usually await the opposition brief before making a decision whether to hold oral proceedings. Delays in filing opposition briefs and in making the decision to schedule resulted in protracted rulings.

Oral proceedings were scheduled an average of 20.7 and 23.5 days into the future in the motions-day courts; the range in the written-submissions courts was from 14.4 to 32.5 days.

This relatively narrow range in scheduling was offset by liberal continuances in some courts. Percentages of first schedulings continued ranged widely, from 18.7 percent in Eastern Pennsylvania to 43.7 percent in Central California, and continuances averaged from 10.1 days in Southern Florida to 142.4 days in Massachusetts. Toughening court policy toward continuances would help reduce ruling times for some courts.

Once oral proceedings are held, all the courts, except Eastern Pennsylvania, ruled from the bench on a majority of motions with a range of from 54.8 percent in Massachusetts to 86.1 percent in Eastern Louisiana. Those motions taken under advisement awaited a ruling an average of between 16.9 days in Southern Florida and 104.1 days in Eastern Pennsylvania. Deliberations took longest in the courts with substantial-drafting practice.

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Written-submissions procedures can deliver rulings to motions as rapidly as motions-day procedures, if they are administered effectively. The prime advantage of a motions-day system is its simplified, self-enforcing administration, a feature that better guarantees a speedy ruling. But achievements under either procedure will be substantially affected by each judge's perception of the need to draft opinions.

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FOREWORD

The Center began its District Court Studies Project in 1974. This is the third report emanating from that project, and it continues the project's focus on the relationships between case management procedures and time required for different elements of those procedures. (See Flanders, Case Management and Court Management in United States District Courts, 1977; Connolly, Holleman, & Kuhlman, Judicial Controls and the Civil Litigative Process: Discovery, 1978.) As in the discovery report, the Summary of Contents in this report provides a brief annotation of the major findings, conclusions, and recommendations.

This is a report on the dynamics affecting the district court's management of its motions practice, investigating the effects of oral proceedings and a motions-day mechanism on the elapsed time between filing the motion and the court's ruling on it. Exploring more deeply, the report examines the distinct segments that constitute the oral-proceedings and the written-submissions tracks, with special emphasis on approaches to administering the two methods and other factors that could affect ruling time, including opinion-drafting practices.

The report concludes that either method can yield improved performance if closely monitored by the court. A motions-day practice, however, diverts many of the scheduling tasks to attorneys and can conserve limited judge time. The preferred method will vary according to local needs and customs. Whatever those conditions may dictate, the report offers useful intelligence on how to achieve optimum results.

A comment is in order about the courts studied in this report and the data analyzed. This report, like the two preceding it, bases its conclusions on data drawn from a large sample of cases terminated in 1975. Two things are worth noting. First, careful design of the project in its early stages has allowed the Research Division to produce three major reports from the same data base, thus conserving the time of court personnel and Center resources. Perhaps more important, however, is the fact that while the data are eminently sound as a basis for analyzing litigative phenomena, it is less clear that the findings in this report describe current performance in the courts analyzed. One reason for this is that the courts studied--like other courts we have not studied--have put the reports of the District Court Studies Project to use. They have evaluated the findings presented in its reports, considered the merits

of the recommendations drawn therefrom, and received as well less formal communication from the staff of the Research Division. In other words, based on what many judges have told us, the project has helped the federal district courts reflect on their practices and thus improve their ability to do justice effectively and expeditiously. This observation is perhaps the most gratifying that we at the Center can make.

A. Leo Levin
Director

ACKNOWLEDGMENTS

Projects of this kind are usually group efforts. This report could only have come to a fruitful conclusion by the work and devotion of several members of the Research Division staff. Acknowledging their contributions is but a small way of showing our sincere gratitude.

William B. Eldridge, Director of the Research Division, offered sage advice and guidance at critical stages along the path to completion. Steve Flanders, District Court Studies Project Director, early on saw the need to collect "hard" data on court performance enabling us to make the objective statements in this report.

The early spadework for this study was done by Edith A. Holleman and Michael J. Kuhlman, both authors of the earlier report on discovery. Edith gave unstintingly of her time putting together a comprehensive first draft and assembling data for the tables in appendix C. Mike helped to edit early drafts, assisted in reformatting the presentation, and finalized the tables in appendix C.

Producing the manuscript was the responsibility of Helen Connolly, a staff editor, and Gloria Chamot and Myrna Brantley, our typists. Helen edited all drafts and super-

vised preparation of the final manuscript, ensuring consistency of format and style. Gloria worked many long hours under deadline pressure throughout the course of this project. Myrna provided invaluable assistance in finalizing the text and tables.

The following student clerks on the research division staff were of substantial assistance. Steven J. O'Neil, a George Washington University law student, conducted legal research, checked cites, and assisted in initial calculations. Shirley Dawson, Carol Blumenthal, Norman Nickens, and Jane Nishida worked on final calculations and performed necessary proofreading tasks under time pressure.

Of course, we take full responsibility for any errors in data or interpretations that remain in this report.

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Patricia A. Lombard

INTRODUCTION

Concern over delay in federal litigation has generated considerable study and debate in recent years regarding techniques of judicial administration.¹ The discovery process has been the object of much of this attention; a recurring theme of most of the literature is that increased judicial control would lower costs and speed up discovery activity.² In line with this thinking, the Advisory Commit-

1. The Federal Judicial Center launched the District Court Studies Project to study how judicial administration could eliminate unnecessary delays in federal litigation and increase federal trial court productivity. This report is the third in the series; the first two were: Flanders, Case Management and Court Management in United States District Courts (Federal Judicial Center 1977) [hereinafter cited as Case Management] and Connolly, Holleman, & Kuhlman, Judicial Controls and the Civil Litigative Process: Discovery (Federal Judicial Center 1978) [hereinafter cited as Discovery report]. Other public and quasi-public organizations have also sought to examine the relationship between administration and the cost/speed of litigation. The Office for Improvements in the Administration of Justice of the U.S. Department of Justice has entered into a contract with the University of Wisconsin to study the subject, and the Law Enforcement Assistance Administration is providing five years of funding to the American Bar Association's Action Commission to Reduce Court Costs and Delay.

2. See Discovery report, supra note 1; Case Management, supra note 1; 1 National Commission For the Review of Antitrust Laws and Procedures, Report to the President and the Attorney General (1979). See also Brazil, The Adversary Character of Civil Discovery: A Critique and Proposals for

tee on Civil Rules has proposed the adoption by rule of a discovery conference mechanism that would permit resort to court intervention once abuse is threatened.³

In contrast to the wide concern over the operation of discovery, the management of motions practice has sparked little commentary,⁴ yet time data show that wide disparities exist among courts in the speed at which they rule on motions.⁵

This report describes our findings from the study of motions.⁶ The text examines the effects of different

Change, 31 Vand. L. Rev. 1295 (1978); Cohn, Federal Discovery: A Survey of Local Rules and Practices in View of Proposed Changes to the Federal Rules, 63 Minn. L. Rev. 253 (1979).

3. Advisory Committee on Civil Rules, Revised Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure at 3-5 (Feb. 1979).

4. But see, e.g., Edelstein, The Ethics of Dilatory Motion Practice: Time for Change, Symposium--Quality Advocacy and the Code of Professional Responsibility, 44 Fordham L. Rev. 1069 (1976). See also Steckler, Motions Prior to Trial, 29 F.R.D. 299 (1960).

5. Case Management, supra note 1, at 29-33.

6. Throughout this report the term "motion" includes both party-initiated motions and court-initiated orders, which are very similar in kind and effect to party-initiated motions (e.g., motion to dismiss for failure to prosecute/order to show cause why a case should not be dismissed for failure to prosecute). These orders are included under the headings of their complementary party-initiated motions in the tables in appendix C.

methods of managing motions on the total elapsed time from the filing of the motion to the ruling, an interval that we term "ruling time."⁷ The tables in appendix C provide an overview of the motion activity that occurred in our sample population.⁸ They list by court the types and distribution

7. Whenever time duration values or enumerations are presented in the text of this report, a specific elapsed time interval has been calculated for each motion included in the subpopulation reported on. In order to compute this interval, a valid date had to be present in the data base for both the initiating and terminating event of interest. All substantive and procedural motions (see tables 20 and 21 for a listing of the individual motion types included in these categories) for which a valid interval could be computed are included in each defined subpopulation unless a further limiting criterion is specifically noted. However, this means that missing or incorrect data causes individual motions to be included in some subpopulations and excluded from others. Because of these population changes, the initiating and terminating event of interest for each subpopulation is always specifically noted in the report and all table values are accompanied by the number of observations on which the value is calculated.

8. All motions, grouped into five major categories--substantive, procedural, discovery, posttrial, and other--are included in the appendix tables where the individual motion types comprising the categories are listed. Only substantive and procedural motions are included in the subpopulations described in the text. The motions in these two categories were chosen for analysis because they were more frequently filed and were subject to more consistent processing procedures than motions in the other three groupings. For example, some judges employed magistrates to handle their discovery-related motions and Massachusetts required the filing of a Notice of Delinquency before filing a discovery-related motion.

Information on individual motion types was compiled by Michael Kuhlman and Edith Holleman. These data are avail-

of motions filed, the incidence of motion-related activities (e.g., hearings and the filing of opposition briefs), and the frequency of total and partial case dispositions due to the outcome of motion rulings.

The data base for the project, including this report, consists of information recorded for about 500 terminated cases⁹ in each of six metropolitan courts¹⁰ chosen for study because of their wide differences in disposition times and termination rates.¹¹

One central finding of the summary report in the project series was that the judiciary's use of effective case management techniques can speed civil terminations without impairing the quality of justice.¹² A prominent technique is the use of routine oral argument on motions¹³

able in the form of working papers upon request to the Research Division of the Federal Judicial Center.

9. For a full description of the sampling methodology, see appendix A, infra.

10. The courts are: Eastern Louisiana, Central California, Southern Florida, Massachusetts, Maryland, Eastern Pennsylvania.

11. See table 15, infra.

12. See Case Management, supra note 1, at ix-x.

13. Id. at 31.

combined with minimal preparation of opinions for publication.¹⁴ This study confirms that finding and demonstrates the manner in which courts can best implement procedures for the handling of oral argument.

14. Id. at x.

CHAPTER I

COURT CLASSIFICATION

Effective judicial management of motions can help to expedite the disposition of cases. Once a motion is filed, lawyers have little incentive to pursue other litigative activity in the case until a ruling is announced. A ruling that disposes of the action would mean that further pleadings or discovery had been wasted. But even if the ruling is not dispositive, the nature and extent of further litigation activity might well depend on the ruling. Thus, the time between a motion and a ruling is often "dead time", and numerous delayed rulings in a case can accumulate substantial amounts of dead time. To keep dead time to a minimum, each judge should develop a case management system that produces prompt and correct rulings on each motion, terminating the litigation entirely or turning it back to the lawyers for further proceedings without undue delay.¹⁵

This study seeks to explain how the handling of motions

15. One commentator has suggested that motions are some times filed for no other reason than to protract litigation. Edelstein, The Ethics of Dilatory Motion Practice: Time for Change, Symposium--Quality Advocacy and the Code of

by a court can affect ruling time--the elapsed time between the filing of the motion and the ruling order. In particular, we are interested in the extent to which a court's use or nonuse of oral proceedings expedites rulings.

Focusing solely on ruling speed, we recognize, limits the comprehensiveness of this study. Utilization of judge and lawyer time and litigation costs are equally important variables bearing on the efficacy of procedures for handling motions. Nonetheless, rule 1 of the Federal Rules of Civil Procedure recognizes "speed" as a core consideration in weighing case management options. In our opinion, the prominence of that mandate justifies our focus. Furthermore, we are confident that minimizing ruling time also contributes to the just and inexpensive determination of an action called for by the rule.

An examination of ruling time must also take into account variations in opinion-drafting practice. Experience tells us that drafting an opinion will extend ruling time. If this drafting burden varies substantially among courts, that factor must be controlled for when we measure the

Professional Responsibility, 44 Fordham L. Rev. 1069 (1976). See also 1 Report of the National Commission for the Review of Antitrust Laws and Procedures 82 (1979). Slow rulings on motions can only facilitate, if not encourage, this kind of abuse.

effects of the use of oral proceedings on ruling times.

Motion-Handling Procedures

The judge is accorded wide discretion in the use of oral proceedings. A minority of circuits recognize a right to oral proceedings before the entry of summary judgment under rule 56,¹⁶ but such a right, despite ambiguous rule language¹⁷, is not otherwise recognized by case law.¹⁸

16. *Bon Air Hotel, Inc. v. Time, Inc.*, 426 F.2d 858 (5th Cir. 1973); *Georgia Southern and Florida Railway Co. v. Atlantic Coast Line Railroad Co.*, 373 F.2d 493 (5th Cir. 1967); *Dredge Corp. v. Palmer*, 338 F.2d 456 (9th Cir. 1964); *Bowbridge v. Lehman*, 252 F.2d 366 (6th Cir. 1958) (invalidated local rule that provided no method whereby a party opposing a motion for summary judgment may request oral argument).

17. The Federal Rules of Civil Procedure that govern motions are not clear on the subject of "hearings." See rule 12(d): ". . . the motion. . . shall be heard. . ."; rule 37(a): ". . . after opportunity for hearing. . ."; rule 56(c): "The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. . . ." But see rules 24(c), 26(c), 30(d), 35(a), 37(a)(2), 37(b) and (c), and 41(b), which make no mention of hearings.

18. See *FCC v. WJR, The Goodwill Station, Inc.*, 377 U.S. 265, 272-285 (1948); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (local rule provision that motions be determined without oral argument held valid under rule 78 and not a denial of due process). See also *Spark v. Catholic University of America*, 510 F.2d 1277, 1280 (D.C. Cir. 1975); *Parish v. Howard*, 459 F.2d 616 (8th Cir. 1972) (no absolute right to oral hearing for rule 56 motions for summary judgment); *Addington v. Mid-American Lines*, 77

An examination of the local rules in our sample courts and interviews with judges revealed substantial differences in the use of oral proceedings. Two courts, Eastern Louisiana and Central California, had local rules requiring the party filing a motion to schedule oral proceedings¹⁹; the remaining four courts either had no local rule on the subject (Maryland) or expressly provided by local rule that the hearings were a matter of judicial discretion.²⁰ In those courts the decision to schedule oral proceedings was made on a motion-by-motion basis, with consideration given to the views of counsel and the nature and complexity of the issues and the relief sought.

Local rules or individual case management techniques

F.R.D. 750, 752 n.1 (W.D. Mo. 1978) ("hearing" requirement of rule 37 is satisfied by affidavits). But see *Edgar v. Slaughter*, 548 F.2d 770, 773 (8th Cir. 1977) (fundamental fairness requires that a hearing be held before extreme sanction of default is imposed); *Flaks v. Koegel*, 504 F.2d 702, 712 (2d Cir. 1974); *American Finance System Inc. v. Harlow*, 65 F.R.D. 94, 112 (D. Md. 1974) (party usually entitled to hearing before rule 37(a)(4) sanctions are assessed).

19. Rule No. 3(b)(C.D. Cal., June 1, 1967) 1 Fed. Local Ct. Rules (1970); Rule No. 3.1 (E.D. La., Jan. 1, 1975) 1 Fed. Local Ct. Rules (1978).

20. Rule No. 10(b)(S.D. Fla., Dec. 23, 1974), 1 Fed. Local Ct. Rules (1978); Rule No. 12(c) (D. Mass., Sept. 1, 1967) 1 Fed. Local Ct. Rules (1968); Rule No. 36 (E.D. Pa., July 1, 1973) 2 Fed. Local Ct. Rules (1975).

implement the use of oral proceedings. Local rules in Central California and Eastern Louisiana set up a weekly motions-day system to handle their substantial number of oral proceedings.²¹ Under these provisions, the moving party is responsible for setting a date for oral proceedings, which must follow the motion by not less than seventeen days in Central California²² and not less than fifteen days in Eastern Louisiana.²³ Scheduling conflicts among counsel are often worked out informally and continuances can be stipulated. Consistent with their policy of leaving use of oral proceedings up to the individual judge, none of the remaining courts had local rule procedures for the handling of oral proceedings.²⁴ It was up to the individual judges

21. Rule No. 3(b)(C.D. Cal., June 1, 1967) 1 Fed. Local Ct. Rules (1970); Rule No. 3.1 (E.D. La., Jan. 1, 1975) 1 Fed. Local Ct. Rules (1978).

22. Rule No. 3(e)(1)(C.D. Cal., June 1, 1967) 1 Fed. Local Ct. Rules (1970).

23. Rule No. 3.2 (E.D. La., Jan. 1, 1975) 1 Fed. Local Ct. Rules (1978).

24. A strict reading of rule 78 might appear to require each court to establish motions-day procedures: ". . . each district court shall establish regular times and places. . . at which motions requiring notice and hearing may be heard and disposed of. . . ." But not only is a court exempt from this obligation either if "local conditions make it impractical" or "[to] expedite its business," but so few motions actually "require" notice and hearings under present case

to employ personally fashioned management techniques to handle their oral-proceedings track.

All six courts had local rules limiting the time for filing opposition briefs. In five courts, the time limit ranged from five to fourteen days after the motion is served or filed.²⁵ Eastern Louisiana set its deadline back eight days from the scheduled date of the oral proceedings.²⁶ Enforcement of these time limits varied.²⁷ In motions-day courts, little policing was needed, because the hearing date

law that motions-day procedure from a practical standpoint depends on the court's policy toward oral-proceedings use. Consistent with this, each of the six courts studied geared their motion-handling procedure to fit their policy toward oral proceedings.

25. 5 days (from date of service): Rule No. 36 (E.D. Pa., Sept. 26, 1972) 2 Fed. Local Ct. Rules (1977) (this rule sets a filing date within five days of service and requires that opposition briefs be submitted by 10:00 a.m. on the filing date); 5 days (from date of service): Rule No. 10(c)(S.D. Fla., Dec. 25, 1974) 1 Fed. Local Ct. Rules (1978); 7 days (from date of service): Rule No. 3(f)(1) (C.D. Cal., June 1, 1967) 1 Fed. Local Ct. Rules (1978); 10 days (from date of service): Rule No. 12(a)(2)(D. Mass., Sept. 1, 1967) 1 Fed. Local Ct. Rules (1968); 14 days (from date of filing): Rule No. 6(A)(D. Md., April 1, 1978) 1 Fed. Ct. Local Rules (1978).

26. Rule No. 3.7 (E.D. La., Jan. 1, 1975) 1 Fed. Local Ct. Rules (1978).

27. Tables 7 and 11, infra, show the extent to which variations in the enforcement of the time limits affected the filing of briefs in the six courts.

automatically cut off the filing of opposition briefs. An opposing party could always forego submitting a written opposition and argue orally at the hearing without raising a due process problem. In the written-submissions courts, however, vigilant policing and active monitoring of the time limit by the judge was necessary to ensure compliance, but refusing to receive briefs after a deadline risked raising a due process problem, since the written brief is the sole means of presenting opposing arguments.

Table 1 reports the percentages of rulings preceded by oral proceedings. The two courts that required scheduling of oral proceedings held hearings on most motions prior to ruling: Eastern Louisiana with 69.2 percent and Central California with 55.9 percent. The written-submissions courts held oral proceedings much less frequently, with a group average of 24.0 percent. Within the group, Massachusetts and Maryland used oral proceedings substantially more than Eastern Pennsylvania and Southern Florida. In no court was there total adherence to one practice, but the percentages reflect the effects of the varying policy positions.

This examination permits us to divide the six courts into two categories based on their oral-proceedings prac-

TABLE 1

PERCENTAGE OF RULINGS
PRECEDED BY ORAL PROCEEDINGS
BY COURT GROUP AND BY COURT
(Total Rulings)^a

<u>Motions-day courts</u> ^b			
62.6%			
<u>E. La.</u>		<u>C. Cal.</u>	
69.2%		55.9%	
(461)		(524)	
 <u>Written-submissions courts</u> ^b			
24.0%			
<u>Mass.</u>	<u>Md.</u>	<u>E. Pa.</u>	<u>S.Fla.</u>
36.6%	30.9%	14.8%	13.8%
(465)	(476)	(392)	(958)

^aTotal rulings equal the number of motions for which a valid ruling-time interval, from the filing of the motion to the entry of the ruling order, could be computed. The presence of a valid hearing date earlier than the ruling date caused the motion to be assigned to the oral-proceedings category.

^bThe group percentage is the average of the individual court percentages for all courts within the group.

tice. The motions-day courts, Central California and Eastern Louisiana, have similar policies expressed in local rules favoring the use of oral proceedings. Both courts implement this policy by a motions-day mechanism and depend upon this mechanism to enforce opposition-brief deadlines. The written-submissions courts leave to each judge the decision whether to use oral proceedings, the monitoring and

policing of opposition-brief deadlines, and the management of other aspects of motion practice.

Opinion-Drafting Burden

Rule 52 of the Federal Rules of Civil Procedure governs the filing of findings of facts and conclusions of law for both trial and motion practice. Rule 52(a) requires that findings of facts and conclusions of law accompany a ruling on any rule 41(b) motion for a directed verdict and any judgment after a nonjury trial,²⁸ but the rule further specifies that findings and conclusions are "unnecessary" for rulings on rule 12 and rule 56 motions. The rule is silent on the requirements for orders on other motions. Something more than a ruling order must be prepared by the judge upon the granting of certain motions,²⁹ and yet none

28. In *Featherstone v. Barash*, 345 F.2d 246 (10th Cir. 1965), three reasons were advanced for this rule: (1) to afford the appellate court a clear understanding of the ground or basis of the decision of the trial court; (2) to make definite what is decided in order to apply the doctrines of estoppel and res judicata to future cases; (3) to evoke care on the part of the trial judge in considering and adjudicating the facts in dispute. 345 F.2d at 249. Reasons (1) and (3) would appear to apply equally to rulings on many motions.

29. Two federal rules specifically require orders that do more than simply announce a ruling. Rule 65(d) requires that orders granting injunctions and restraining orders set

of these rules requires the judge to prepare the order in writing. A judge may announce a ruling by lodging a written order or by an oral presentation from the bench.³⁰

A written opinion explaining the underlying reasons for a ruling doubtless consumes more judge time than a simple order or an oral announcement of a ruling in open court. This increased expenditure of judge time is expected to postpone the date of the ruling. Data from our case sample confirm this expectation.³¹

forth the reasons for the issuance in specific terms and describe in reasonable detail the act or acts to be restrained. Rule 56(d) requires that orders granting summary judgments that do not fully adjudicate the case must set forth the facts that appear without substantial controversy. In addition, rule 23(d) permits a court that certifies a class to design an order covering a number of procedural topics.

30. Under rule 79(a) the clerk must enter such rulings on the civil docket.

31. The following table shows mean ruling times in days for substantive motions ruled on without prior oral proceedings with and without written opinions. ("Opinion" is defined at pp. 17-18, *infra*.) Procedural motions were omitted from this table because few opinions accompanied rulings on procedural motions in each court as compared to the total number of procedural motions ruled on.

	<u>E. La.</u>	<u>C. Cal.</u>	<u>Mass.</u>	<u>Md.</u>	<u>S. Fla.</u>	<u>E. Pa.</u>
Without opinions	17.0	31.5	65.2	91.4	27.2	78.8
(number of cases)	(58)	(187)	(172)	(182)	(592)	(162)
With opinions	47.5	127.0	103.9	128.3	51.8	225.1
(number of cases)	(2)	(6)	(17)	(55)	(61)	(34)

Furthermore, we assume that an opinion prepared for publication will occasion a drafting burden greater than that of an opinion intended for more limited dissemination.³² Comparing the ruling times of published and unpublished opinions, therefore, should reveal longer ruling times for the published group. However, since we did not record published opinions for the cases in our sample, these data could not be generated directly. But we were able to examine differences in publishing among the courts by using a surrogate measure described later in the text.³³

In addition to its direct effects on the ruling time of each individual motion, the accumulated drafting burden of a

32. No study has examined this matter, but comments by judges and academics suggest its validity. See Carrington, Statement to Arizona State Discovery Conference 20 (1978); Goldman, Attitudes of United States Judges Towards Limitation of Oral Argument and Opinion-Writing in the United States Court of Appeals 7 (Federal Judicial Center 1975). One federal trial judge has stated that among the causes of popular dissatisfaction with the administration of justice are "the proliferation of non-essential published opinions," and "preoccupation with the formalization for publication" of the trial judge's findings and conclusions underlying a non-jury final disposition. Christensen, A Modest Proposal for Immeasurable Improvement, 64 A.B.A.J. 693 (1978) (Judge Christensen's observation appears to apply with equal force to publishing ruling opinions on motions.) See also Hanson, Findings of Facts and Conclusions of Law, 32 A.B.A.J. 52 (1946).

33. See pp. 19-21, infra.

civil and criminal case load could extend the ruling times of motions without written opinions. If work priorities favor matters requiring drafting or are based on a "first come-first served" basis, it is conceivable that a heavy drafting burden in a court will extend the ruling times of the court's whole motion inventory. Variance in drafting burden might mask the effects of oral-proceedings use on ruling times.³⁴ If the courts exhibit sufficient disparity, they can be further classified to account for that confounding variable in our examination of court ruling times.

Court differences in the drafting burden of opinions, both published and unpublished, can be measured by calculating the percentage of rulings on motions accompanied by "opinions." In coding the sample cases, we had recorded the total number of pages of the ruling order and opinion combined, but we could not distinguish between simple ruling orders and those ruling orders with written opinions. Therefore, we treated a combined page count of two pages or less as a ruling order without an opinion and a combined

34. Case Management reported that "some judges [in the sampled courts] expressed concern that a great deal of time is spent preparing opinions, and others indicated a negligible amount of time is spent on opinion writing." Case Management, supra note 1, at 56-57.

page count of three or more pages as one with an opinion.

Following this convention, table 2 shows the percentages of substantive motions in our sample that had rulings accompanied by written opinions.³⁵ The courts are arrayed from top to bottom by percentages. Maryland and Eastern Pennsylvania had noticeably higher percentages of opinions than the other four courts. Interestingly, the motions-day courts, Central California and Eastern Louisiana, had the two lowest percentages.³⁶

TABLE 2
COMPARISON OF COURTS BY PERCENTAGE
OF RULINGS WITH WRITTEN OPINIONS
FOR SUBSTANTIVE MOTIONS^a

<u>Court</u>	<u>Rulings</u>	<u>Written Opinions</u>	<u>Percentage of Rulings with Written Opinions</u>
Md.	356	78	21.9
E. Pa.	242	46	19.0
S. Fla.	756	70	9.3
Mass.	334	30	9.0
C. Cal.	424	27	6.4
E. La.	316	15	4.7

^aA ruling was deemed to have a written opinion if the ruling order and memorandum combined to a total of three or more pages.

35. It should be noted that multiple motions filed by one party and cross-motions can result in a single ruling with one memorandum pertaining to several motions. This means that in some instances a ruling with a written opinion totalling ten pages, for example, could be associated with more than one motion.

36. This may suggest a relation between oral-proceedings

As noted earlier, the extent to which a court drafts opinions for publication can further affect its ruling-time performance. We did not code whether an opinion in our case sample was published. However, Case Management reported computations of the number of all published opinions per judge and the number of pages of all published opinions per judge in the six sample courts for an eighteen-month period.³⁷ Since this period covered at least part of the case life of all our sample cases, it is assumed that the extent to which the additional burden of drafting opinions for publication affected ruling times in our case sample is fairly reflected by this measure of publishing. The rate of published opinions for civil motions (not reported in Case Management) and the rates of all opinions published in civil and criminal cases are reported in table 3.

use and opinion writing. If a court is in the habit of offering counsel the opportunity to argue motions in open court, the judge may observe a complementary tradition of ruling orally from the bench, obviating the written opinion. Thus, a tradition of orality may govern motion handling from the standpoint of both the attorney and the judge.

37. Case Management, supra note 1, at 56-59. All opinions actually published in the Federal Supplement and Federal Rules Decisions from January 1973 to June 1974: Vol. 357 to 376 F. Supp. and Vol. 58 to 63 F.R.D. The opinions of senior judges were not included in the tabulation.

TABLE 3
PUBLISHED OPINIONS
PER JUDGE

<u>Court</u>	<u>All Published Trial and Motion Opinions</u>	<u>Court</u>	<u>Civil Motions Opinions^a</u>
E. Pa.	24.7	E. Pa.	17.7
Md.	13.8	Md.	7.9
Mass.	12.3	S. Fla.	3.7
S. Fla.	7.4	E. La.	2.3
E. La.	6.7	C. Cal.	2.0
C. Cal.	4.1		

^aCivil motion data for Massachusetts were not available.

As with the percentages reported in table 2, Maryland and Eastern Pennsylvania had the highest rates of published opinions, overall and for civil motions, although their ranks reversed. This indicates a greater tendency to publish in Eastern Pennsylvania. Again comparing the rates of published civil motions opinions to table 2, the remaining three courts had similarly low drafting and publishing tendencies, although ranks did switch within this group as well. While the substantial gap first noted in table 2 between Maryland and Eastern Pennsylvania on one hand and Southern Florida, Eastern Louisiana, and Central California on the other hand, is maintained in both columns of table 3, Massachusetts showed a tendency to publish overall more like the former group and to draft more like the latter group.

We do not know whether this greater tendency to publish in Massachusetts extended to civil motions.

One other matter needs examination. Classifying the courts by drafting burden on the basis of tables 2 and 3 would be premature unless variations in case loads per court were also taken into account. The number of cases processed by a judge can influence his rate of publishing and of written opinions. If workload, as opposed to judicial attitude, is the reason for substantial drafting in a court, any adverse consequences of drafting must be accepted as the result of forces resting beyond the judges' control. On the other hand, if attitude is the reason, a shift in approach toward drafting might ease the adverse consequences.

To account for the workload factor, we compared publication output per judge for each court reported in table 3 to a workload index showing total active cases per judge. That index was constructed from Administrative Office statistics on new case filings, pending cases, and case terminations.³⁸ The time spans covering publication output and

38. The workload index for each district was derived by adding FY 1973 pending cases and terminated cases to FY 1974 case filings, and dividing by the number of judgeships. This provides a measure of the total number of civil and criminal cases active at one time or another during FY 1973 and FY 1974. The data were obtained from Director of the

workload, however, do not correspond exactly. Both publication output and workload covered the period from January 1973 to June 1974, but workload also included cases terminated between July 1972 and December 1972 because Administrative Office statistics are tabulated by fiscal year. Although it is evident that the raw numbers reported in table 4 would be different if we had been able to eliminate these early fiscal 1973 terminations, we do not believe that the differences would be large enough to alter substantially the patterns discussed below.

Table 4 reports the publication rate and workload index for each court and expresses the relationship between these measures as a ratio. The courts are arrayed from highest to lowest ratios, and each court's rank for each of the component measures is also provided.

Briefly explaining the meaning of the ratios and their possible patterns will help in interpreting the results. A 1:1 ratio would mean that, on an average, for each case included in the workload index, one opinion was published. The higher the ratio, the greater the number of cases in which no opinions are published. Uniformity in the ratios

TABLE 4

COURTS RANKED BY RATIO OF
ACTIVE CASES PER JUDGE
TO PUBLISHED OPINIONS PER JUDGE^a

<u>Court</u>	<u>Workload Index (Rank)</u>		<u>Published Opinions per Judge (Rank)</u>		<u>Ratio</u>
C. Cal.	884	(4)	4.1	(6)	216:1
E. La.	1,420	(2)	6.7	(5)	212:1
Mass.	2,462	(1)	12.3	(3)	200:1
S. Fla.	1,038	(3)	7.4	(4)	140:1
Md.	862	(5)	13.8	(2)	62:1
E. Pa.	682	(6)	24.7	(1)	28:1

^aWorkload index was computed by adding FY 1973 pending and termination totals to FY 1974 filing totals. Published opinions per judge covered the period from January 1973 to June 1974.

would indicate that the court differences in publication rates noted in table 3 were a function of variations in workload, not in judicial attitudes toward publication. It would also indicate that publishing output is fairly constant among the six courts after controlling for workload differences. On the other hand, ratios that show no pattern across the courts would suggest that publication rates are as likely to be the product of publication policy, which is under judicial control, as they are related to objective workload differences.

The ratios in table 4 are far from uniform across the courts. Central California had nearly eight times as many

active cases for each published opinion as Eastern Pennsylvania. Central California and Eastern Louisiana, the courts whose judges published the least, had the highest ratios, and Eastern Pennsylvania and Maryland, the courts whose judges published the most, had the lowest ratios. Although the Massachusetts ratio appears to be relatively high, it is actually nearer to that of Maryland when its large number of ICC cases are excluded from the calculations.³⁹

We tested the significance, if any, of the relationship between the workload index and published opinion rates of

39. The need to take ICC cases into account when examining the Massachusetts workload index is precipitated by that court's disproportionately large number of ICC case filings. Since a typical ICC case is unlikely to generate a published opinion because motion and trial activity rarely occurs, their inclusion in the calculation artificially inflates the Massachusetts workload index. We can partially control for ICC cases by excluding the "Commerce" cases listed in pending FY 1973 data and FY 1974 case filing data obtained from tables C-3 and C-3a of the Annual Report of the Director of the Administrative Office of the United States Courts for these years. However, this operation does not exclude ICC cases pending/commenced in FY 1973 and terminated before June 30, 1973 and may include a few cases filed under other than the Transportation title of the U.S. code. Nonetheless, the following ratios, partially adjusted for ICC cases, show Massachusetts shifting to a position in the ranks much closer to Maryland's ratio with little change in the remaining courts:

	<u>C.Cal.</u>	<u>E.La.</u>	<u>Mass.</u>	<u>S.Fla.</u>	<u>Md.</u>	<u>E.Pa.</u>
Adjusted ratios:	216:1	211:1	103:1	140:1	62:1	27:1

the courts. The results show no statistically significant relationship.⁴⁰ Controlling for ICC cases switched Massachusetts' rank with that of Southern Florida but did not affect significance of the relationship.⁴¹ Owing to the absence of evidence indicating that a high publication rate is due to a high workload level, we conclude that the con-

40. A determination of "statistical significance" is made based on the results of specific significance testing. In this process, the statistical value computed for the sample population is compared to the range of values that could be attained for a population for which an alternate hypothesis--usually the null hypothesis, that there is no effect--is true. If the probability of obtaining for the comparison population the same value obtained for the sample population is small enough to satisfy the researcher, then "significance" can be claimed. A probability value of .05 (1 chance in 20) is commonly used as the maximum acceptable level for determining significance. A more stringent level of .01 is also frequently used.

The value for Kendall's rank correlation coefficient tau was $-.33$. The possible values for tau range from -1 to $+1$. The strength of the relationship is indicated by the absolute distance from zero. The sign of the coefficient indicates whether the relationship is direct (high ranks on one measure tend to be associated with high ranks on the second measure) or inverse (high ranks on one measure tend to be associated with low ranks on the second measure).

The results of a normal deviate (Z score) significance test indicate that the probability of attaining or exceeding this value for a population of six cases for which the null hypothesis is true is greater than .05. Therefore the correlation is determined to be "not significant" and we cannot responsibly conclude that the observed relationship (see table 4) is due to anything other than chance population variations.

41. The computed Kendall's tau value $-.60$ was not significant at the .05 probability level.

sequences of publishing and drafting on ruling practice can be controlled in some measure by the judge.⁴² It remains to be seen whether publishing and drafting in general has the effect of increasing ruling times of motions, a consequence that may invite reconsideration of liberal expenditure of judge time on these activities.⁴³

Using our two complementary measures of drafting bur-

42. Although they are not statistically significant, the court ranks for publishing and workload (adjusted for ICC cases) did show a tendency to array in inverse order. In a rough way, the larger the workloads of the judge, the less the judge published. This may indicate that judges are influenced by a perception of their workload in weighing the decision whether to draft an opinion for publication.

43. There has been commentary on trial court drafting policy. In 1964, the Judicial Conference resolved that "the judges of the courts of appeals and the district courts [should] authorize the publication of only those opinions which are of general precedential value and that opinions authorized to be published be succinct." Annual Report of the Judicial Conference of the United States 11 (1964). One commentator has stated that, although this is a desirable goal, judges are not much helped by such a statement of policy; the author elaborated on what the policy should be. Vestal, Publishing District Court Opinions in the 1970s, 17 Loy. L. Rev. 673 (1971). See also, Vestal, A Survey of Federal District Court Opinions: West Publishing Company Reports, 20 Sw.L.J. 63 (1966); Vestal, Reported Opinions of the Federal District Courts: Analysis and Suggestions, 52 Iowa L. Rev. 379 (1966). Another commentator has suggested increasing the publication of opinions on discovery rulings based on research that found that state judges "ignore the [discovery rules]. . . by a weekly rendition of unappealable and publicly unknown orders" Shuchman, Discovering the Law of Discovery by Low Level Investigations, 38 Geo. Wash. L. Rev. 32 (1969).

dens in tables 2 and 3, we divided the courts into three groups:

Motions-day/minimal-drafting courts:

Eastern Louisiana

Central California

Written-submissions/minimal-drafting courts:

Southern Florida

Written-submissions/substantial-drafting courts:

Massachusetts

Maryland

Eastern Pennsylvania

Placing Massachusetts was a problem. Its ratio of opinions to rulings on civil motions was relatively low (table 2), but although we do not know its rate of publishing civil motion opinions, its rate of publishing all opinions was relatively high (table 3). This rate suggests that its judges shoulder a substantial drafting burden independent of civil motion opinions. Since the Massachusetts publishing rate is nearly that of Maryland's, we decided that its drafting burden was more like that of Eastern Pennsylvania and Maryland than the remaining courts.

CHAPTER II

MOTION MANAGEMENT ANALYSIS

The purpose of this analysis is to ascertain whether variation in oral-proceedings use is associated with differences in ruling time.⁴⁴ In the preceding chapter, we showed that the sampled courts can be distinguished by their use of oral proceedings and their drafting burden. An overview of ruling times will provide a general understanding of the impact of these two variables on ruling-time performance. This will enable us to raise questions that can be answered by a closer examination of motion-handling practices.

Overall Ruling Times

Mean ruling times are presented for each court in table 5. The differences in ruling times suggest that either oral-proceedings use or drafting burden influenced ruling-time performances. Ruling times in each of the three minimal-drafting courts were much shorter than those in each of the courts with substantial drafting burdens, and the times for

44. Ruling time is the total elapsed time from the filing of a motion to the entry of the order by the judge.

the two motions-day courts averaged less than three of the four written-submissions courts.

TABLE 5

MEAN RULING TIME
IN DAYS BY COURT
(Number of Cases)

Motions-day/minimal-drafting

<u>E. La.</u>	<u>C. Cal.</u>
27.4	46.0
(461)	(524)

Written-submissions/minimal-drafting

<u>S. Fla.</u>
31.3
(958)

Written-submissions/substantial-drafting

<u>Mass.</u>	<u>Md.</u>	<u>E. Pa.</u>
91.2	92.0	84.5
(465)	(476)	(392)

The fact that Southern Florida and Eastern Louisiana had similar means despite markedly different oral-proceedings use suggests that drafting burden may have a greater effect on ruling times than a court's motion-handling system. However, the eighteen-day difference in means between Eastern Louisiana and Central California, both motions-day courts with similar drafting burdens, suggests that the nature of implementing these largely similar systems played a role in ruling-time performances.

None of the six courts depended solely on one procedure to handle its motions. In each court, ruling-time performance was affected to some extent by both written submissions and oral proceedings. To measure the contributions of each track to overall court performance, table 6 reports their mean ruling times in each court; the majority track, the track that handled the majority of motions in a court, is indicated by an asterisk.

TABLE 6
MEAN RULING TIMES
FOR MOTION-HANDLING TRACKS
(Number of Cases)

	<u>Motions-day/ Minimal-drafting</u>		<u>Written-submissions/ Minimal-drafting</u>	<u>Written-submissions/ Substantial-drafting</u>		
	<u>E. La.</u>	<u>C. Cal.</u>	<u>S. Fla.</u>	<u>Mass.</u>	<u>Md.</u>	<u>E. Pa.</u>
Oral proceedings	35.6* (319)	57.7* (293)	46.0 (132)	130.9 (170)	115.5 (147)	162.9 (58)
Written submissions	8.9 (142)	31.1 (231)	29.0* (826)	68.3* (295)	81.5* (329)	70.8* (334)

* Majority track.

Table 6 reinforces our observations about table 5. The implementation of procedures again emerges as a prime factor distinguishing the performance of the motions-day courts. Despite similarities in oral-proceedings use, motions-day

proceedings, and drafting burdens, the two motions-day courts, Eastern Louisiana and Central California, had an average twenty-two day difference in ruling times for oral proceedings. A closer examination of the elapsed time for each component of their oral-proceedings tracks will reveal the reasons for this sizable difference.⁴⁵

Comparing the written-submissions and oral-proceedings ruling times in Southern Florida to those of the other written-submissions courts reveals wide differences in performance along both tracks. Yet the extent to which these differences are due to the method of handling motions or its implementation rather than drafting is not evidenced by the data. Closely focusing on the components of each track in those courts will shed light on that important question.⁴⁶

The importance of effectively handling a minority track in order to ensure a strong overall ruling-time performance is also evidenced by the data in table 6. Ruling time for the minority track varied among the courts much more than the majority track: the extremes for majority tracks were

45. See pp. 40-55, infra.

46. See pp. 32-55, infra.

29.0 and 81.5 days, in contrast to 8.9 and 162.9 days for minority tracks. The minority track, however, affected overall ruling-time performance differently according to the prevailing use of oral proceedings in the court. In motions-day courts, written submissions, the minority track, improved overall court performance, but oral proceedings had quite the opposite effect in the written-submissions courts where they extended their ruling times. This highlights the importance of developing effective procedures to handle oral proceedings even in written-submissions courts where they are less frequently used.

We have identified several questions that can only be answered by a closer examination of the components that make up each motion-handling track. First we will examine the written-submissions track and then the oral-proceedings track. Our objective will be to identify differences in the implementation of procedures that contribute to the differences in ruling time noted above.

The Written-Submissions Track

The written-submissions track can comprise three events: (1) filing the motion, (2) filing the opposition brief, and (3) filing the ruling order. If an opposition

brief is filed,⁴⁷ the ruling process involves two sequential time intervals:

- (1) Opposition-brief time: Date of filing the motion to date of filing the opposition brief.
- (2) Deliberation time: Date of filing the opposition brief to date of filing the ruling order.

Opposition Briefs

Each court had a time limit for filing of opposition briefs; they ranged from five to fourteen calendar days.⁴⁸ Table 7 reports mean opposition-brief time for all motions ruled upon after an opposition brief was filed but without a hearing held or scheduled⁴⁹ (the local rule time limit is

47. For those motions in which no opposition brief is filed, ruling time alone is the only critical measure of performance, even though it must be assumed that the court will wait at least the local rule time limit for briefs before considering the motion to be "decision ready."

48. See pp. 11-12, supra.

49. The extra condition that no hearing be scheduled causes this population of cases to be slightly smaller (39 cases) than the population that would have resulted from simply imposing the "opposition brief filed" criterion on the "written-submissions" population for which ruling-time information was reported earlier (table 6). However, in this process analysis section, we controlled for the possible delaying effect of oral-proceedings scheduling for motions eventually ruled on without oral proceedings. Rul-

cited in the table). Because drafting burden could not impact on opposition-brief time, this offers us an oppor-

TABLE 7

MEAN OPPOSITION-BRIEF TIME FOR MOTIONS WITH
RULINGS ON THE WRITTEN-SUBMISSIONS TRACK
(Number of Cases)

	<u>Motions-day/ Minimal-drafting</u>		<u>Written-submissions/ Minimal-drafting</u>	<u>Written-submissions/ Substantial-drafting</u>		
	<u>E. La.</u>	<u>C. Cal.</u>	<u>S. Fla.</u>	<u>Mass.</u>	<u>Md.</u>	<u>E. Pa.</u>
Local rule limit	-- ^a	7	5 ^b	10	14	5
Mean time	12.8 (4)	23.4 (23)	12.2 (234)	38.4 (60)	27.8 (71)	25.1 (107)

^aThe local rule tied the filing of the opposition brief to the schedule for oral proceedings rather than to the date on which the motion was filed.

^bThe local rule permitted 10 days for the filing of opposition briefs to rule 56 motions. Rule No. 10(J)(1) (S.D. Fla., Dec. 23, 1974) 1 Fed. Local Ct. Rules (1979).

ing times for this restricted population are provided in the table below.

MEAN RULING TIMES FOR MOTIONS
RULED ON AFTER AN OPPOSITION BRIEF
WAS FILED BUT WITH NO HEARING ACTIVITY
(Number of Cases)

<u>Motions-day/ Minimal-drafting</u>		<u>Written-submissions/ Minimal-drafting</u>	<u>Written-submissions/ Substantial-drafting</u>		
<u>E. La.</u>	<u>C. Cal.</u>	<u>S. Fla.</u>	<u>Mass.</u>	<u>Md.</u>	<u>E. Pa.</u>
24.0 (4)	125.4 (23)	46.8 (234)	108.0 (60)	144.0 (71)	164.6 (107)

tunity to ascertain the extent to which the differences in ruling-time performances in tables 5 and 6 are due to variations in imposing local rule deadlines.

The opposition-brief times do not closely match local rule deadlines.⁵⁰ Southern Florida attorneys adhered most closely to their local rule time limits. Although its mean opposition-brief time was more than double its limit, the excess was still considerably less than the other courts. In addition, since it had a ten-day local rule time limit for oppositions to summary judgment motions (as opposed to the five days for other motions) and since those motions were frequently filed,⁵¹ its excess may have been nearly de minimis. By contrast, Massachusetts' opposition briefs averaged 28.4 days late and Eastern Pennsylvania's, 20.1 days late. In Maryland, answer time averaged slightly more than in Eastern Pennsylvania, but under the fourteen-day time limit, briefs averaged only 13.8 days late. The average

50. Note that the numerical differences between local rule time limits and mean opposition-briefing times cited in the text would be reduced slightly by the fact that the local rule limits in Southern Florida, Massachusetts, Eastern Pennsylvania, and Central California run from the date of service, and not from the filing date on which the comparisons are based.

51. Twenty-one percent of the 234 motions comprising the Southern Florida sample were motions for summary judgment.

answer time of 16.4 days late recorded for Central California may be due to a lack of enforcement procedures for these motions, which are not subject to the usual oral-proceedings process.

These data show that variability both in rule deadlines for opposition briefs and in the degree of adherence to those deadlines could account for the substantial differences among the courts in opposition-brief times. For written-submissions motions, this variability directly affects ruling times, since the filing of the opposition brief triggers the deliberation time. Therefore, shorter rule deadlines and their closer monitoring should help contract ruling times.

Deliberations

The filing of the opposition brief may mean that the lawyers have ended their input but the judge's work is just starting. The ruling may be directly prolonged by further legal research, analysis, and drafting (if a written opinion is prepared) and indirectly prolonged by attending to other tasks that for one reason or another have a higher priority.

To help us assess the direct and indirect pressures prolonging advisement times, table 8 presents overall time

under advisement for each court and advisement times for motions with and without written opinions.⁵² The difference between Southern Florida's overall deliberation time and that of the other three written-submissions courts supports the contention that drafting policy extends deliberation time. Differences among the courts were quite wide, with Southern Florida judges deliberating an average of only one month in contrast to two months in Massachusetts, almost

TABLE 8

MEAN DELIBERATION TIME FOR RULINGS
FOR ALL WRITTEN-SUBMISSIONS MOTIONS,^a
NO-OPINION MOTIONS, OPINION MOTIONS^a
(Number of Cases)

	<u>Motions-day/ Minimal-drafting</u>		<u>Written-submissions/ Minimal-drafting</u>	<u>Written-submissions/ Substantial-drafting</u>		
	<u>E. La.</u>	<u>C. Cal.</u>	<u>S. Fla.</u>	<u>Mass.</u>	<u>Md.</u>	<u>E. Pa.</u>
All motions	11.2 (4)	102.2 (23)	34.6 (234)	69.6 (60)	116.2 (71)	139.5 (107)
No-opinion	11.2 (4)	86.3 (20)	31.9 (207)	73.3 (51)	84.1 (57)	105.9 (79)
Opinion	0 (0)	206.4 (3)	55.0 (27)	48.7 (9)	246.6 (14)	233.9 (28)

^aThis population includes all procedural and substantive motions that were ruled on after an opposition brief was filed but for which no hearings were held or scheduled.

52. A motion was considered to have had a written opinion if the ruling papers exceeded two pages. This is the definition used to derive the figures in table 2. However, pro-

four months in Maryland, and four and one-half months in Eastern Pennsylvania.

How much did the burden of drafting opinions account for these differences? Comparing data on rulings with an opinion to those with no opinion suggests that drafting stretched advisement time in Southern Florida, Maryland, and Eastern Pennsylvania but not in Massachusetts, where rulings with opinions took twenty-five days less time under advisement than those with simple orders. Leaving Massachusetts aside for a moment, note that Southern Florida had much shorter deliberation times than Maryland and Eastern Pennsylvania for both opinion rulings and no-opinion rulings. The comparisons with Eastern Pennsylvania were particularly striking: about two and one-half months longer for the no-opinion group (74.0 days) and about six months longer for the opinion group (178.9 days).

Southern Florida, Maryland, Eastern Pennsylvania, and Central California had substantially shorter deliberation times for the more numerous group of no-opinion rulings. No-opinion rulings require only a decision and a simple ruling order. This suggests that the judges in those courts accord

cedural motions, with and without opinions, are included in this population.

motions with opinions a lower priority. But note that the no-opinion rulings in Eastern Pennsylvania, Maryland, and Central California were much lengthier than those in Southern Florida. This may indicate that the administration of drafting in those courts diverts judicial resources from no-opinion rulings.

The setting of priorities has a more evident impact on the Massachusetts performance as its opinion ruling group took less time for deliberations. There are two alternative explanations for the Massachusetts phenomenon, both of which involve the manner in which its judges set priorities for work on motions: either a higher priority is always accorded motions that need opinions or a "first come-first served" priority system is used.⁵³ Either alternative allows those motions that need minimal judge time and yet comprise the majority of the motion inventory to suffer delays, while a handful of motions needing large inputs of judge time get the attention of the judge.

53. Assuming that the flow of motions into a judge's inventory is relatively steady over time and the incidence of motions needing drafting is random, the effects of "first come-first served" on deliberation time can be illustrated

Summary

Variations in ruling times for written submissions are affected by the length of deadlines for filing opposition briefs and the extent to which time deadlines are enforced. Severe ruling delay, however, can result from the drafting of opinions, and these delays appear to affect not only the rulings for which opinions are drafted, but the remaining motions for which they are not. Drafting fewer opinions and adjusting priorities may help to reduce some delay, since no-opinion motions individually need far less judge time and yet comprise the bulk of motions in each of the courts.

The Oral-Proceedings Track

The time components of the oral-proceedings track⁵⁴ are:

as follows. If the "first" motion takes enough judge time to translate into a deliberation time of fifty days and the "second" motion enough to translate into only one day of deliberation time, and assuming the second motion is filed on the day following the first motion, deliberations will consume fifty days for each motion if "first come-first served" is used. On the other hand, giving the second motion a priority because it will consume less deliberation time would result in fifty-one days of deliberation time for the first motion but only one day for the second. Thus, deliberation time for the two motions would average fifty days for "first come-first served" and only twenty-six days for the second method of prioritization.

- (1) Initiation-of-scheduling time: Date of filing motion to date of first scheduling a hearing.
- (2) Scheduling time: Date of first scheduling a hearing to the first date scheduled for hearing.
- (3) Continuance time: First date scheduled for a hearing to actual hearing date.
- (4) Deliberation time: Date of hearing to date ruling order is filed.

Initiation of Scheduling

Both motions-day courts had local rules that coupled a presumption that all motions would be subject to oral proceedings with a requirement that the moving party immediately set the matter down for oral proceedings. Table 9 reports mean initiation-of-scheduling times for all courts and

54. In contrast to the procedure used in the previous section on written-submissions motions, no attempt was made to limit the analysis population to only those motions for which all four time components could be calculated. Rather, any procedural or substantive motion for which a valid date was present in the case file for both the initiating and terminating event of the particular component is included in the analysis of that component. The only exception to this selection criterion is that the "initiation-of-scheduling" component is calculated only once for each motion. If the same motion was scheduled for more than one hearing, only the time from the filing of the motion to the scheduling of the first hearing is included in the population.

distributes these times over ten-day time intervals. The zero-days value indicates the percentages of simultaneous filings of motions and schedulings of oral proceedings.

Simultaneity occurred in more than 90 percent of oral-proceedings motions in the motions-day courts, but in less than one-half the motions in the written-submissions courts. The local rules governing motions-day procedure clearly have the effect of linking the filing of the motion to the scheduling of oral proceedings.

Focusing solely on nonsimultaneous schedulings, the mean times show schedule initiation delays in the written-submissions courts of from one month in Southern Florida to three months past the filing of the motions in Massachusetts. Although Central California's mean was two weeks shorter than Eastern Louisiana's, that gain was offset by its smaller percentage of simultaneous schedulings.

Because the majority of schedulings is nonsimultaneous in the four written-submissions courts, the observed delays have a substantial impact on their oral-proceedings ruling times. One of the reasons explaining these delays is shown in table 10. It can be seen from the figures in the bottom row of the table that judges in three courts usually await the filing of the opposition brief before announcing a

TABLE 9

DISTRIBUTION OF INITIATION-OF-SCHEDULING TIMES

Days	Motions-day/ Minimal-drafting						Written-submissions/ Minimal-drafting			Written-submissions/ Substantial-drafting								
	E. La. (N=439)			C. Cal. (N=359)			S. Fla. (N=112)			Mass. (N=75)		Md. (N=63)		E. Pa. (N=34)				
	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%
0	424	96.6	96.6	330	91.9	91.9	29	25.9	25.9	9	12.0	12.0	12	19.0	19.0	15	44.1	44.1
1-10	6	1.4	97.9	17	4.7	96.7	31	27.7	53.6	18	24.0	36.0	6	9.5	28.6	2	5.9	50.0
11-20	1	0.2	98.2	6	1.7	98.3	18	16.1	69.6	11	14.7	50.1	6	9.5	38.1	4	11.8	61.8
21-30	2	0.5	98.6	3	0.8	99.2	11	9.8	79.5	5	6.7	57.3	9	14.3	52.4	0	0.0	61.8
31-40	3	0.7	99.3	1	0.3	99.4	5	4.5	83.9	2	2.7	60.0	3	4.8	57.1	2	5.9	67.6
41-50	0	0.0	99.3	0	0.0	99.4	7	6.3	90.2	6	8.0	68.0	6	9.5	66.7	4	11.8	79.4
51-60	0	0.0	99.3	0	0.0	99.4	2	1.8	92.0	1	1.3	69.3	5	7.9	74.6	3	8.8	88.2
Over 60	3	0.7	100.0	2	0.6	100.0	9	8.0	100.0	23	30.7	100.0	16	25.4	100.0	4	11.8	100.0
Non-zero mean	38.7			24.1			31.6			92.0			54.5			51.4		

TABLE 10
DISTRIBUTION OF ANSWER-TO-SCHEDULING TIMES

Days	Written-submissions/ Minimal-drafting			Written-submissions/ Substantial-drafting								
	S. Fla. (N=37)			Mass. (N=18)			Md. (N=22)			E. Pa. (N=7)		
	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%
0	1	2.7	2.7	1	5.6	5.6	1	4.5	4.5	0	0.0	0.0
1-10	18	48.6	51.3	2	11.1	16.7	1	4.5	9.1	1	14.3	14.3
11-20	4	10.8	62.2	6	33.3	50.0	9	40.9	50.0	0	0.0	14.3
21-30	3	8.1	70.3	0	0.0	50.0	3	13.6	63.6	3	42.9	57.1
31-40	3	8.1	78.4	2	11.1	61.1	2	9.1	72.7	2	28.6	85.7
41-50	2	5.4	83.8	0	0.0	61.1	1	4.5	77.3	0	0.0	85.7
51-60	0	0.0	83.8	0	0.0	61.1	0	0.0	77.3	0	0.0	85.7
Over 60	6	16.2	100.0	7	38.9	100.0	5	22.7	100.0	1	14.3	100.0
Overall mean		31.9			73.7			33.4			30.9	
Percentage of answered motions scheduled after filing of opposition brief (total answered)		69.8 (53)			58.1 (31)			59.5 (37)			43.7 (16)	

decision to schedule oral proceedings. In each of these courts, over one-half of the schedulings were made after the opposition brief was filed, and in the remaining court, Eastern Pennsylvania, 43.7 percent were scheduled after its filing. This link between opposition-brief filing and the scheduling of oral proceedings points to the importance of enforcing compliance with local rule deadlines for opposition briefing. As shown in table 11, Southern Florida is the only written-submissions court that managed to keep briefing close to its local rule limitation.

TABLE 11

MEAN OPPOSITION-BRIEF TIME
FOR MOTIONS SUBJECT TO
ORAL PROCEEDINGS
(Number of Cases)

	<u>Written-submissions/ Minimal-drafting</u>	<u>Written-submissions/ Substantial-drafting</u>		
	<u>S. Fla.</u>	<u>Mass.</u>	<u>Md.</u>	<u>E. Pa.</u>
Local rule limit	5 ^a	10	14	5
Mean time	13.0 (84)	60.8 (99)	35.1 (99)	33.4 (42)

^aThe local rule permitted 10 days for the filing of opposition briefs to rule 56 motions. Rule No. 10(J)(1) (S.D. Fla., Dec. 23, 1974) 1 Fed. Local Ct. Rules (1979).

Yet stricter enforcement of briefing time limits will not in and of itself ensure a speedy scheduling in the

written-submissions courts. Table 10 reports the mean times for the interval between the filing of the opposition brief and the initiation of scheduling in these courts. Each court averaged at least one month from the filing of briefs to the scheduling of oral proceedings, and Massachusetts took an average of more than two and one-half months. In written-submissions courts, adherence to briefing time limits must be coupled with rapid post-answer scheduling to minimize delay in scheduling. Of course, the self-enforcing nature of schedule initiation incorporated into the motions-day local rules means that the judges in these courts need not monitor this component of scheduling in order to keep initiation time to a minimum.

Scheduling

The courts differed substantially in their manner of scheduling. In the motions-day courts, the moving party scheduled the motion subject to "floors" of fifteen and seventeen days.⁵⁵ In the written-submissions courts, the judge performed the scheduling function on an ad hoc basis, often with the assistance of counsel's recommendations. The

55. See notes 22 and 23, supra. A party could move to reduce the "floor".

written-submissions courts did not have a floor for scheduling.

Scheduling times for each court are reported in table 12. In order to exhibit better the effects of the "floor" in the motions-day courts, initial scheduling time is distributed over ten-day time intervals.

Scheduling in the two motions-day courts appeared to show the effects of the "floor" as the bulk of schedulings (68%) were concentrated in the 11-30 day categories. Thus, while the floor prevented precipitous schedulings, most oral proceedings were set for one month or less, probably due to the availability of a motion day every week and the placing of scheduling responsibility with the party seeking court action. Among the remaining courts, most oral proceedings were quickly scheduled by the judge. Only Maryland and Eastern Pennsylvania scheduled a substantial portion of their oral proceedings far into the future with 15.9 and 10.8 percent of their oral proceedings scheduled on a date more than sixty days from the scheduling date.

Continuance

Once scheduled, oral proceedings can be further delayed by continuances. Table 13 examines two aspects of that

TABLE 12

DISTRIBUTION OF SCHEDULING TIMES

Days	Motions-day/ Minimal-drafting			Written-submissions/ Minimal-drafting			Written-submissions/ Substantial-drafting											
	E. La. (N=439)			C. Cal. (N=374)			S. Fla. (N=117)			Mass. (N=77)		Md. (N=69)		E. Pa. (N=37)				
	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%			
0	0	0.0	0.0	2	0.5	0.5	4	3.4	3.4	1	1.3	1.3	2	2.9	2.9	0	0.0	0.0
1-10	69	15.7	15.7	38	10.2	10.7	53	45.2	48.7	22	28.6	29.9	14	20.3	23.2	11	29.7	29.7
11-20	210	47.8	63.6	158	42.2	52.9	32	27.4	76.0	25	32.5	62.3	12	17.4	40.6	6	16.2	45.9
21-30	90	20.5	84.0	98	26.2	79.1	15	12.8	88.9	15	19.5	81.8	14	20.3	60.9	6	16.2	62.1
31-40	34	7.7	91.7	45	12.0	91.2	10	8.5	97.4	5	6.5	88.3	9	13.0	73.9	9	24.3	86.5
41-50	24	5.5	97.3	16	4.3	95.5	2	1.7	99.1	5	6.5	94.8	5	7.2	68.1	1	2.7	89.2
51-60	3	0.6	98.0	3	0.8	96.3	0	0.0	99.1	1	1.3	96.1	2	2.9	84.0	0	0.0	89.2
Over 60	9	2.0	100.0	14	3.7	100.0	1	0.9	100.0	3	3.9	100.0	11	15.9	100.0	4	10.8	100.0

problem: (1) the percentages of first schedulings not continued in each court; and (2) the average time that schedulings were continued.

The incidence of continuances varied among the courts. The percentages of schedulings going forward without a continuance ranged from 81.3 percent in Eastern Pennsylvania to 56.3 percent in Central California. The remaining courts ranged narrowly from 67.3 percent to 72.2 percent.

Massachusetts judges continued oral proceedings an average of nearly five months.⁵⁶ In stark contrast, Southern Florida judges allowed only ten days per continuance, in spite of the fact that continuances of the originally scheduled oral proceedings date occurred as regularly as in Massachusetts. Eastern Louisiana, Central California, and Maryland all averaged over a month for continuance times, but the effect on overall ruling time was much greater in Central California because more of its schedulings were continued and because it depends more on oral-proceedings procedure. Thus, the difference between Eastern Louisiana and Central California in overall ruling-time performances

56. The small number of observations contributing to the recorded mean for Eastern Pennsylvania limit its use as a comparison figure.

TABLE 13

DISTRIBUTION OF CONTINUANCE TIMES

Days	Motions-day/ Minimal-drafting			C. Cal.			Written-submissions/ Minimal-drafting			Mass.			Md.			E. Pa.		
	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%
0 ^a	223	72.2	72.2	153	56.3	56.3	53	69.7	69.7	46	71.9	71.9	37	67.3	67.3	13	81.3	81.3
1-10	21	6.8	79.0	24	8.8	65.0	16	21.0	90.8	7	10.9	82.8	5	9.1	76.4	1	6.2	87.5
11-20	19	6.1	85.1	19	7.0	72.1	4	5.3	96.0	2	3.1	85.9	2	3.6	80.0	0	0.0	87.5
21-30	19	6.1	91.3	19	7.0	79.0	1	1.3	97.4	1	1.6	87.5	5	9.1	89.1	0	0.0	87.5
31-40	3	1.0	92.2	11	4.0	83.1	2	2.6	100.0	0	0.0	87.5	1	1.8	90.9	0	0.0	87.5
41-50	9	2.9	95.1	16	5.9	89.0	0	0.0	100.0	1	1.6	89.0	1	1.8	92.7	0	0.0	87.5
51-60	1	0.3	95.5	2	0.7	89.7	0	0.0	100.0	1	1.6	90.6	1	1.8	94.5	0	0.0	87.5
Over 60	14	4.5	100.0	28	10.3	100.0	0	0.0	100.0	6	9.4	100.0	3	5.5	100.0	2	12.5	100.0
Non-zero mean	41.3			42.1			10.1			142.4			32.1			134.3		

^aHearings that were held earlier than their original date were considered to have a duration of zero for this calculation and are included in this category.

for oral proceedings (see table 6) can be attributed in part to Central California's more relaxed policy on granting continuances.⁵⁷

Deliberation

Once oral proceedings are held, the judge is faced with the choice of ruling from the bench or taking the motion under advisement. Table 14 reports the percentage of bench rulings for each court, the mean overall deliberation time, and the mean deliberation time for motions taken under advisement.

Five courts had a majority of their rulings coming from the bench on the date of the oral proceedings. Only Eastern Pennsylvania judges took more than one-half of their motions under advisement, but this practice probably had less of an effect on their overall ruling time because only 14.8 percent of their motions were subject to oral proceedings. Tendencies to take motions under advisement had a substan-

57. In a previous report, we noted that Central California judges often did not require a party to show a need for more time in granting a postponement in the discovery cutoff date. Discovery report, supra note 1, at 73. Delegation of postponement authority to deputy clerks appeared to further reduce the necessity of making a showing of need for additional time. Id. at 173 n. 147. We observed the same practices being applied to continuances of oral proceedings.

TABLE 14
 DISTRIBUTION OF DELIBERATION TIMES
 FOR MOTIONS SUBJECT TO ORAL PROCEEDINGS

Days	Motions-day/ Minimal-drafting			Written-submissions/ Minimal-drafting			Written-submissions/ Substantial-drafting											
	E. La. (N=424)			C. Cal. (N=310)			S. Fla. (N=136)			Mass. (N=177)		Md. (N=153)		E. Pa. (N=59)				
	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%	No.	%	Cum.%
0	279	86.1	86.1	204	65.8	65.8	89	65.4	65.4	97	54.8	54.8	92	60.1	60.1	18	30.5	30.5
1-10	23	7.1	93.2	50	16.1	81.9	28	20.6	86.0	23	13.0	67.8	19	12.4	72.5	10	16.9	47.5
11-20	5	1.5	94.8	16	5.2	87.1	8	5.9	91.9	13	7.3	75.1	4	2.6	75.2	9	15.3	62.7
21-30	4	1.2	96.0	5	1.6	88.7	4	2.9	94.9	9	5.1	80.2	5	3.3	78.4	1	1.7	64.4
31-40	2	0.6	96.6	3	1.0	89.7	2	1.5	96.3	5	2.8	83.1	3	2.0	80.4	0	0.0	64.4
41-50	2	0.6	97.2	9	2.9	92.6	1	0.7	97.1	10	5.6	88.7	7	4.6	85.0	0	0.0	64.4
51-60	4	1.2	98.5	4	1.3	93.9	1	0.7	97.8	7	4.0	92.7	5	3.3	88.2	0	0.0	64.4
Over 60	5	1.5	100.0	19	6.1	100.0	3	2.2	100.0	13	7.3	100.0	18	11.8	100.0	21	35.6	100.0
Overall mean		4.7			11.6			5.8			19.9			32.6				72.3
Non-zero mean		33.8			34.0			16.9			43.8			81.8				104.1

tial effect on the overall deliberation times of the motions-day courts; the 20 percent difference between the two motions-day courts is another reason for Eastern Louisiana's speedier rulings on oral-proceedings motions reported in table 6.

The time that judges took to rule on motions under advisement also affects ruling time. Mean deliberation time for these motions varied among the courts from about seventeen days in Southern Florida to over one hundred days in Eastern Pennsylvania. Although these calculations also included motions without written opinions, the means suggest that drafting policy had an effect on deliberation time. The three substantial-drafting courts, Eastern Pennsylvania, Maryland, and Massachusetts, had substantially longer means than the three minimal-drafting courts. This again suggests that the drafting burden of a court stretches its deliberations, probably in the direct and indirect ways that we had noted earlier.⁵⁸

Oral-proceedings use also appears to help shorten deliberations. Comparing overall means in tables 8 and 14, the courts (with the exception of Eastern Louisiana⁵⁹) had

58. See pp. 16-17, supra.

59. With only four written-submissions motions used to

far shorter deliberation times for motions subject to oral proceedings. These differences are even more substantial if we include rulings from the bench to calculate our oral-proceeding mean. The widest difference was 90.6 days in Central California (102.2 days versus 11.6 days) and the ratios of differences ranged from 2:1 in Eastern Pennsylvania to 9:1 in Central California. It also should be noted that these differences are not due to the presence of larger numbers of opinions in the written-submissions population. All five of these courts had longer mean deliberation times for no-opinion, written-submissions deliberations, although the differences for Maryland and Eastern Pennsylvania are negligible,⁶⁰ than for the oral-proceedings deliberation times that included rulings with and without opinions. Assuming that variations in the burden of opinion drafting did not account for these differences, and oral-proceedings use appears to be the reason for the shorter deliberations.

calculate its means for table 8, Eastern Louisiana's 11.2 day average is of limited use as a comparison figure.

60. See table 8, supra.

Summary

The motions-day courts, by minimizing drafting and by giving attorneys responsibility over setting and scheduling oral proceedings, save their judges time spent on administrative and drafting chores and succeed in minimizing delays in ruling. The 22.1 day ruling-time differences between the Eastern Louisiana and Central California motions-day courts can be largely attributed to the tendency of Central California judges to liberally continue the originally scheduled oral proceedings and to take more motions under advisement. Central California closely matched the performance of Eastern Louisiana in other aspects of motions-day management.

Among the written-submissions courts, Southern Florida's much shorter mean ruling time (46.0 days versus 130.9, 115.5, 162.9) is attributable to the minimal drafting burden shouldered by its judges and their insistence on a closely monitored, fast track for components of oral proceedings coupled with short continuances. In the other courts, rulings are delayed not only because of drafting burden, but also because schedules are less rigorous, time limits are not properly enforced, and scheduling events are not closely monitored.

CHAPTER III

CHOOSING MOTION-HANDLING PROCEDURES

Which system offers superior ruling-time performance, motions-day or written-submissions? At first blush, the systems might appear to perform equivalently. Eastern Louisiana and Southern Florida, both relatively unencumbered by drafting, performed almost equally as rapidly. Both worked their majority track to maximum efficiency and neither had their overall performance impeded by a poor performance along their minority track. What appeared to set those two courts apart was a commitment by their judges to sound management of motions. That raises a question as to which of the two systems is easier to manage. On that score, the motions-day system appears to hold the edge.

The self-enforcing nature of motions-day procedure guides most motions to a bench decision on a predesigned schedule that places responsibility on the attorneys to handle scheduling chores. This minimizes the role of the opposition brief in the scheduling of the oral proceedings, offers the judge an opportunity to rule from the bench on most motions, and keeps time-consuming administrative chores to a minimum. By contrast, the written-submissions procedure

risks delaying a ruling unless the judge closely monitors and enforces opposition-brief schedules, unless the judge decides and acts on whether to hold oral proceedings immediately after the filing of the opposition brief (or request for a hearing), and unless the judge closely monitors his potentially sizable in-chambers motion inventory and accords priorities that minimize overall deliberation time. Considering the performances of all the courts in the study, motions-day procedures appear to optimize ruling-time performance.⁶¹

The drafting burden can have a substantial impact on ruling-time performance. Judges in each court drafted opinions and slated some of these opinions for publication. The courts in which opinion writing occurred more frequently exhibited longer deliberation times. It would be beyond the reach of this report to counsel a reduction of opinion drafting.⁶² That decision is within the discretion of the

61. Some lawyers advise us that oral proceedings also enable them to cut down on the time for briefing motions. They point out that some issues, particularly factual ones, are more easily explained at a hearing than briefed and that marginal legal issues can be omitted from a brief because the hearing will offer an opportunity to raise or respond to them. Thus, some lawyer time expended in attending oral proceedings may possibly be saved by reducing the time used in preparing briefs.

62. But see Case Management, supra note 1, at 58-59.

judge; the decision depends on the individual characteristics of each case. But judges considering whether to explain their rulings in a written opinion should realize that the consequence will be a delayed ruling as well as possible delays in rulings on other motions not slated for opinions.

In conclusion, written-submissions procedures can deliver rulings to motions as rapidly as motions-day procedures if both are administered effectively. The advantage of a motions-day system is its simplified, self-enforcing administration, a feature that better guarantees speedy rulings. But achievements under either procedure will be affected by each judge's perception of the need for drafting.

APPENDIX A

SAMPLING METHODOLOGY

The District Court Studies Project examined six metropolitan courts⁶³ with sharply contrasting numbers of terminations per judgeship and times for case dispositions to ascertain whether the procedures used in those courts accounted for the statistical differences. With one exception, all six courts were selected on the basis of their fiscal 1973 performance; Massachusetts was selected based on its fiscal 1975 statistics. Table 15 shows the statistical ranking of the six courts among the twenty-four metropolitan courts; table 16 shows the standing of these six courts regarding time and number of case dispositions. The data used in this report were collected in each of the six courts; they pertain to approximately 500 randomly selected

63. A metropolitan court is roughly defined as one with six or more judgeships. Metropolitan courts, as opposed to smaller ones, were studied because: they are large enough to soften the impact of any individual judge; their case loads tend to be diverse, assuring that a broad cross-section of federal litigation is represented in the sample; and their number is likely to increase in the future, as the federal court system grows.

civil cases, each terminated in fiscal 1975.⁶⁴ (Additional information on these courts is provided in tables 17 and 18, which contain statistical portraits of various performance measures.)

The information collected for each case included the dates of all recorded actions taken by counsel or the court.⁶⁵ First the case file was examined, then the docket sheet was reviewed to validate the dates recorded and ensure the completeness of the file.⁶⁶

64. Certain types of cases were systematically excluded from the sample: multidistrict litigation cases, uncontested Federal Home Loan Act and Veterans Home Loan Act collection cases, and cases enforcing foreign subpoenas. Multidistrict cases frequently did not have a full set of case filings; the other two types of cases usually had no filings or docket sheet entries other than a complaint, motion for default, and order of default. In addition, cases on appeal and certain other cases were excluded if the files were unavailable. If a randomly selected case was excluded, the immediately preceding case on the termination list was substituted. Most (93%) of the ICC cases in Massachusetts were excluded, subsequent to initial selection and without substitution, because of their singularly high rate of filing in that court. ICC cases do not tap judicial resources in that district, since practically all such cases are handled by one deputy clerk.

65. The data collection instrument is in appendix B.

66. The filing date recorded by the clerk's office was used unless there was a discrepancy of more than three days between the filing date and counsel's mailing date. In such cases, the mailing date was used to obtain a more accurate record of the time in which counsel had acted. If filings appeared to be missing, correspondence between counsel and the court was examined to determine if any reference to missing filing was made.

TABLE 15
TIME AND NUMBER OF DISPOSITIONS PER JUDGESHIP
OF METROPOLITAN DISTRICT COURTS

<u>Civil Median Time (months)</u>				<u>Dispositions per Judgeship</u>				<u>Criminal Median Time (months)</u>			
<u>Courts</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>Courts</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>Courts</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>
S. -Fla.*	4	4	4	E. La.*	535	465	453	S. C.	2.5	2.3	3.0
W. Tex.	5	7	10	E. Va.	516	463	527	W. Tex.	2.5	3.0	2.8
M. Fla.	6	8	7	W. Tex.	487	471	434	S. Cal.	2.6	2.8	2.9
N. Ill.	6	6	6	Ariz.	487	444	458	E. Va.	2.8	2.4	2.4
Ariz.	7	7	8	S. Cal.	478	539	607	E. La.*	2.9	2.7	2.4
C. Cal.*	7	7	7	S. Tex.	453	455	415	N. Tex.	2.9	3.0	2.8
E. Va.	7	7	7	M. Fla.	448	398	416	S. Tex.	2.9	3.4	3.6
N. Tex.	7	9	10	N. Ga.	441	467	536	S. Fla.*	3.0	3.2	3.1
S. Cal.	8	7	10	N. Tex.	439	435	450	C. Cal.*	3.3	3.5	3.3
N. Ga.	8	6	7	S. Fla.*	435	402	447	Ariz.	3.4	3.2	3.0
S. C.	8	6	6	S. C.	430	422	547	N. Ga.	4.0	4.1	4.5
E. N. Y.	9	10	11	D. C.	407	263	193	N. Ohio	4.6	3.4	3.4
D. C.	10	8	7	N. Ohio	369	343	370	N. Cal.	4.9	4.4	4.0
M. Ohio	10	10	8	Mass.*	368	540	667	N. Ill.	5.5	5.2	5.1
E. Mich.	10	9	9	S. N. Y.	365	325	294	Md.*	5.7	5.6	4.5
W. Pa.	10	9	8	E. Mich.	357	339	393	M. Fla.	5.8	4.5	4.6
S. Tex.	10	12	11	Md.*	325	292	332	E. Mich.	5.8	6.3	6.8
E. La.*	11	11	10	N. Ill.	325	315	337	E. N. Y.	6.8	6.4	6.2
Md.*	11	10	9	N. Cal.	319	320	334	S. N. Y.	6.8	5.7	5.8
N. Cal.	12	12	11	E. N. Y.	308	321	300	E. Pa.*	7.0	4.3	4.2
Mass.*	12	18	19	C. Cal.*	307	304	363	W. Pa.	7.0	5.8	6.0
E. Pa.*	17	16	12	N. J.	260	276	323	Mass.*	7.6	8.4	7.6
N. J.	10	12	13	E. Pa.*	237	234	230	D. C.	7.7	5.7	3.7
S. N. Y.	25	18	15	W. Pa.	176	167	172	N. J.	11.7	12.7	12.2

Source: Administrative Office of the United States Courts, Management Statistics for United States Courts (1973-1975).

Note: The courts are ranked by their performance in fiscal 1973. The six courts selected for study are identified by asterisks.

TABLE 16
 RELATIVE STANDING OF SIX METROPOLITAN
 DISTRICT COURTS

		"Speed"	
		Fast	Slow
"Productivity"	High	Southern District of Florida (S. Fla.)	Eastern District of Louisiana (E. La.) ^a Massachusetts (Mass.) ^b
	Low	Central District of California (C. Cal.)	Eastern District of Pennsylvania (E. Pa.) Maryland (Md.)

Source: Case Management, supra note 1, figure 1 at 3.

^aCivil cases only; disposition of criminal cases is faster than most.

^bIncludes ICC cases that require negligible judge attention. Exclusive of those cases, Massachusetts productivity figures have been near the national average.

TABLE 17

FISCAL 1973 STATISTICAL PORTRAIT OF SIX METROPOLITAN
COURTS SELECTED FOR STUDY

	<u>S. Fla.</u> No. (Rank) ^b	<u>C. Cal.</u> No. (Rank) ^b	<u>Md.</u> No. (Rank) ^b	<u>E. La.</u> No. (Rank) ^b	<u>E. Pa.</u> No. (Rank) ^b	<u>Mass.</u> ^a No. (Rank) ^b
Number of judgeships	7	16	7	9	19	6
Total filings in fiscal 1973	3,081	5,301	2,008	4,142	3,582	1,940
Statistics per judgeship						
Filings (civil)	310 (8)	195 (20)	196 (19)	391 (1)	152 (22)	261 (9)
Pending cases	135 (22)	170 (20)	192 (16)	398 (2)	226 (11)	488 (1)
Terminations	306 (8)	178 (21)	233 (12)	463 (1)	188 (19)	148 (22)
Trials completed (civil and criminal)	73 (3)	49 (12)	46 (14)	62 (7)	33 (20)	24 (24)
Median time from filing to disposition (civil)	4 mos. (1)	7 mos. (5)	11 mos. (20)	11 mos. (19)	17 mos. (23)	12 mos. (21) ^c
Median time from issue to trial (civil)	5 mos. (2)	10 mos. (6)	11 mos. (7)	17 mos. (17)	29 mos. (24)	17 mos. (17) ^c
Number and percentage of civil cases over 3 years old	26 2.8% (4)	175 6.5% (13)	120 9.0% (20)	182 5.1% (9)	532 12.4% (22)	226 3.3% (6)

Source: Administrative Office of the United States Courts, Management Statistics for United States Courts (1973).

^aFiles relating to ICC regulations have been eliminated from the sample.

^bThe rankings are based on the position of each court among the 24 metropolitan trial courts.

^cICC cases are included in these median figures.

TABLE 18

FISCAL 1975 STATISTICAL PORTRAIT OF SIX METROPOLITAN
COURTS SELECTED FOR STUDY

	<u>S. Fla.</u> ^b		<u>C. Cal.</u> ^b		<u>Md.</u> ^b		<u>E. La.</u> ^b		<u>E. Pa.</u> ^b		<u>Mass.</u> ^a ^b	
	No.	(Rank)	No.	(Rank)	No.	(Rank)	No.	(Rank)	No.	(Rank)	No.	(Rank)
Number of judgeships	7		16		7		9		19		6	
Total filings fiscal 1975	3,694		6,270		2,529		4,551		4,319		2,524	
Statistics per judgeship												
Filings (civil)	408	(4)	268	(11)	237	(16)	423	(3)	186	(21)	321	(9)
Pending cases	206	(20)	231	(15)	207	(19)	442	(2)	195	(21)	624	(1)
Terminations	341	(5)	237	(15)	218	(16)	377	(3)	189	(21)	242	(14)
Trials completed (civil and criminal)	71	(4)	37	(17)	48	(12)	55	(10)	33	(21)	30	(23)
Median time from filing to disposition (civil)	4 mos.	(1)	7 mos.	(4)	9 mos.	(12)	10 mos.	(14)	12 mos.	(21)	19 mos.	(24) ^c
Median time from issue to trial (civil)	5 mos.	(1)	12 mos.	(10)	11 mos.	(9)	13 mos.	(12)	18 mos.	(20)	26 mos.	(24) ^c
Number and percentage of civil cases over 3 years old	15 1.2%	(1)	256 7.0%	(17)	84 5.9%	(13)	115 2.9%	(3)	178 4.8%	(9)	931 9.0%	(20)

Source: Administrative Office of the United States Courts, Management Statistics for United States Courts (1975).

^aFiles relating to ICC regulations have been eliminated from the sample.

^bThe rankings are based on the position of each court among the 24 metropolitan trial courts.

^cICC cases are included in these median figures.

APPENDIX C

OVERVIEW OF MOTION ACTIVITY

Two sets of tables are provided in this appendix. Tables 19 to 22 report an overview of motion activity in the courts and a breakout of motions within the major motion categories. Tables 23 to 25 report full and partial dispositions by type of motion and full dispositions by area of litigation.

TABLE 19
GENERAL OVERVIEW OF MOTIONS^a ACTIVITY

	<u>S.Fla.</u>	<u>Mass.</u>	<u>E.Pa.</u>	<u>C.Cal.</u>	<u>Md.</u>	<u>E.La.</u>	<u>All</u>
All cases	597	473	499	543	506	496	3,114
Motions: Total	1,639	1,062	878	910	852	733	6,074
Substantive	967	488	353	535	482	441	3,266
(% of total motions)	(59.0)	(46.0)	(40.2)	(58.8)	(56.6)	(60.2)	(53.8)
Procedural	279	215	190	172	161	175	1,192
(% of total motions)	(17.0)	(20.2)	(21.6)	(18.9)	(18.9)	(23.9)	(19.6)
Discovery	267	301	261	100	93	76	1,098
(% of total motions)	(16.3)	(28.3)	(29.7)	(11.0)	(10.9)	(10.4)	(17.9)
Posttrial	42	12	19	12	5	11	101
(% of total motions)	(2.6)	(1.1)	(2.2)	(1.3)	(0.6)	(1.5)	(1.7)
Other	84	46	55	91	111	30	417
(% of total motions)	(5.1)	(4.3)	(6.3)	(1.0)	(13.0)	(4.1)	(6.9)
Motions/case	2.7	2.2	1.8	1.7	1.7	1.5	2.0
Briefs	1,067	529	613	752	516	209	3,686
Briefs/case	1.8	1.1	1.2	1.4	1.0	0.4	1.2
Motions answered	514	259	268	308	237	47	1,633
(% of total motions)	(31.4)	(24.4)	(30.5)	(33.8)	(27.8)	(6.4)	(26.9)
Hearings	170	231	87	419	188	401	1,496
(% of total motions)	(10.4)	(21.8)	(9.9)	(46.0)	(22.0)	(54.7)	(24.6)
Rulings	1,250	649	619	674	640	551	4,383
(% of total motions)	(76.3)	(61.1)	(70.5)	(74.0)	(75.1)	(75.2)	(72.2)
Final dispositions	246	144	101	240	200	72	1,003
(% of total cases)	(41.2)	(30.4)	(20.2)	(44.2)	(39.5)	(14.5)	(32.2)
Partial dispositions	99	13	34	15	32	42	235
(% of total cases)	(16.6)	(2.7)	(6.8)	(2.8)	(6.3)	(8.5)	(7.5)

^aThroughout this report the term "motion" includes both party-initiated motions and court-initiated orders, which are very similar in kind and effect to party-initiated motions (e.g., motion to dismiss for failure to prosecute/order to show cause why a case should not be dismissed for failure to prosecute). These orders are included under the headings of their complementary party-initiated motions in the tables in this appendix.

TABLE 20
DISTRIBUTION OF
SUBSTANTIVE MOTIONS BY MOTION TYPE
(Percentage of Substantive Motions)

	<u>S.Fla.</u>	<u>Mass.</u>	<u>E.Pa.</u>	<u>C.Cal.</u>	<u>Md.</u>	<u>E.La.</u>	<u>All</u>
Motions for default judgment	198 (20.5)	59 (12.1)	41 (11.6)	50 (9.3)	39 (8.1)	24 (5.4)	411 (12.6)
Motions to dismiss for:							
Failure to join a party	6 (0.6)	1 (0.2)	0 (0.0)	1 (0.2)	2 (0.4)	1 (0.2)	11 (0.3)
Failure to state a claim	173 (17.9)	88 (18.0)	48 (13.6)	129 (24.1)	111 (23.0)	33 (7.5)	582 (17.8)
Improper venue	4 (0.4)	8 (1.6)	5 (1.4)	0 (0.0)	2 (0.4)	4 (0.9)	23 (0.7)
Lack of personal jurisdiction	22 (2.3)	14 (2.9)	5 (1.4)	12 (2.2)	13 (2.7)	8 (1.8)	74 (2.3)
Lack of subject matter jurisdiction	89 (9.2)	38 (7.8)	37 (10.5)	72 (13.5)	32 (6.6)	24 (5.4)	292 (8.9)
Insufficiency of process or service of process	16 (1.7)	5 (1.0)	6 (1.7)	8 (1.5)	4 (0.8)	0 (0.0)	39 (1.2)
Failure to prosecute	41 (4.2)	39 (8.0)	23 (6.5)	35 (6.5)	23 (4.8)	214 (48.5)	375 (11.5)
Motions for judgment on pleadings	12 (1.2)	2 (0.4)	3 (0.8)	4 (0.7)	10 (2.1)	2 (0.5)	33 (1.0)
Motions for more definite statement	37 (3.8)	4 (0.8)	4 (1.1)	12 (2.2)	14 (2.9)	2 (0.5)	73 (2.2)
Motions to strike pleadings	68 (7.0)	8 (1.6)	7 (2.0)	22 (4.1)	6 (1.2)	3 (0.7)	114 (3.5)
Motions for summary judgment	202 (20.9)	97 (19.9)	116 (32.9)	107 (20.0)	159 (33.0)	100 (22.7)	781 (23.9)
Motions for temporary restraining order	23 (2.4)	54 (11.1)	22 (6.2)	32 (6.0)	29 (6.0)	8 (1.8)	168 (5.1)
Miscellaneous substantive motions	51 (5.2)	37 (7.6)	15 (4.2)	14 (2.6)	9 (1.9)	5 (1.1)	131 (4.0)
Total substantive motions	967	488	353	535	482	441	3,266

TABLE 21
 DISTRIBUTION OF
 PROCEDURAL MOTIONS BY MOTION TYPE
 (Percentage of Procedural Motions)

	<u>S.Fla.</u>	<u>Mass.</u>	<u>E.Pa.</u>	<u>C.Cal.</u>	<u>Md.</u>	<u>E.La.</u>	<u>All</u>
Motions to consolidate cases	25 (9.0)	14 (6.5)	21 (11.1)	13 (7.6)	17 (10.5)	32 (18.3)	122 (10.2)
Motions for class action certification	5 (1.8)	6 (2.8)	15 (7.9)	4 (2.3)	9 (5.6)	2 (1.1)	41 (3.4)
Motions for interlocutory review	5 (1.8)	4 (1.9)	2 (1.1)	3 (1.7)	4 (2.5)	1 (0.6)	19 (1.6)
Motions to intervene	12 (4.3)	8 (3.7)	8 (4.2)	3 (1.7)	10 (6.2)	33 (18.9)	74 (6.2)
Motions to join parties	16 (5.7)	24 (11.2)	26 (13.7)	5 (2.9)	9 (5.6)	10 (5.7)	90 (7.6)
Motions for leave to file amended pleading	116 (41.6)	73 (33.9)	45 (23.7)	39 (22.7)	50 (33.1)	59 (33.7)	382 (32.0)
Removal petitions	29 (10.4)	29 (13.5)	15 (7.9)	39 (22.7)	18 (11.2)	9 (5.1)	139 (11.7)
Motions to sever parties or causes of action	6 (2.1)	4 (1.9)	6 (3.2)	6 (3.5)	5 (3.1)	3 (1.7)	30 (2.5)
Motions for stay	27 (9.7)	21 (9.8)	28 (14.7)	20 (11.6)	21 (13.0)	7 (4.0)	124 (10.4)
Motions to transfer from another district	1 (0.4)	1 (0.5)	2 (1.1)	13 (7.6)	0 (0.0)	2 (1.1)	19 (1.6)
Motions to transfer to another district	8 (2.9)	4 (1.9)	12 (6.3)	5 (2.9)	6 (3.7)	6 (3.4)	41 (3.4)
Motions for change of venue	4 (1.4)	1 (0.5)	1 (0.5)	2 (1.2)	0 (0.0)	0 (0.0)	8 (0.7)
Miscellaneous procedural motions	25 (9.0)	26 (12.1)	9 (4.7)	20 (11.6)	12 (7.5)	11 (6.3)	103 (8.6)
Total procedural motions	279	215	190	172	161	175	1,192

TABLE 22

DISTRIBUTION OF DISCOVERY, POSTTRIAL,
AND OTHER MOTIONS BY MOTION TYPE
(Percentage of Total in Category)

	<u>S.Fla.</u>	<u>Mass.</u>	<u>E.Pa.</u>	<u>C.Cal.</u>	<u>Md.</u>	<u>E.La.</u>	<u>All</u>
<u>Discovery motions</u>							
Motions to protect	84 (31.5)	37 (12.3)	31 (11.9)	24 (24.0)	16 (17.2)	11 (14.5)	203 (18.5)
Motions to compel	140 (52.4)	121 (40.2)	199 (76.2)	65 (65.0)	67 (72.0)	61 (80.3)	653 (59.5)
Motions for sanction	22 (8.2)	9 (3.0)	21 (8.0)	8 (8.0)	6 (6.4)	1 (1.3)	67 (6.1)
Miscellaneous discovery motions	21 (7.9)	134 (44.5)	10 (3.8)	3 (3.0)	4 (4.3)	3 (4.0)	175 (15.9)
Total discovery motions	267	301	261	100	93	76	1,098
<u>Posttrial motions</u>							
Motions to stay judgment pending appeal	5 (11.9)	1 (8.3)	2 (10.5)	0 (0.0)	0 (0.0)	0 (0.0)	8 (7.9)
Motions to amend judgment or for relief from judgment	18 (42.8)	5 (41.7)	5 (26.3)	5 (41.7)	2 (40.0)	2 (18.2)	37 (36.6)
Motions for new trial	15 (35.7)	5 (41.7)	10 (52.6)	3 (25.0)	3 (60.0)	8 (72.7)	44 (43.6)
Miscellaneous posttrial motions	4 (9.5)	1 (8.3)	2 (10.5)	4 (33.3)	0 (0.0)	1 (9.1)	12 (11.9)
Total posttrial motions	42	12	19	12	5	11	101
<u>Other motions</u>							
Motions for leave to file in <u>forma pauperis</u>	48 (57.1)	13 (28.3)	21 (38.2)	60 (65.9)	77 (69.4)	4 (13.3)	223 (53.5)
Motions to reconsider	30 (35.7)	33 (71.7)	26 (47.3)	20 (22.0)	14 (12.6)	24 (80.0)	147 (35.3)
<u>Sua sponte</u> dismissals on pleadings	6 (7.1)	0 (0.0)	8 (14.5)	11 (12.1)	20 (18.0)	2 (6.7)	47 (11.3)
Total other motions	84	46	55	91	111	30	417

TABLE 23
DISTRIBUTION OF FINAL DISPOSITIONS
BY MOTION TYPE

	<u>S.Fla.</u>	<u>Mass.</u>	<u>E.Pa.</u>	<u>C.Cal.</u>	<u>Md.</u>	<u>E.La.</u>	<u>All</u>
All cases	597	473	499	543	506	496	3,114
Motions that resulted in cases finally disposed of by motion (% of all cases)	246 (41.2)	144 (30.4)	101 (20.2)	240 (44.2)	200 (39.5)	72 (14.5)	1,003 (32.2)
Motions to dismiss for:							
Lack of subject matter jurisdiction (% of dispositions by motion)	19 (7.7)	18 (12.5)	13 (12.9)	39 (16.3)	16 (8.0)	6 (8.3)	111 (11.1)
Lack of personal jurisdiction (% of dispositions by motion)	3 (1.2)	5 (3.5)	1 (1.0)	3 (1.3)	2 (1.0)	2 (2.8)	16 (1.6)
Improper venue (% of dispositions by motion)	0 (0.0)	1 (0.7)	1 (1.0)	0 (0.0)	0 (0.0)	1 (1.4)	3 (0.3)
Insufficiency of process or service of process (% of dispositions by motion)	3 (1.2)	0 (0.0)	1 (1.0)	0 (0.0)	1 (0.5)	0 (0.0)	5 (0.5)
Failure to state a claim (% of dispositions by motion)	28 (11.4)	26 (18.1)	12 (11.9)	64 (26.7)	51 (25.5)	5 (6.9)	186 (18.5)
Motions for default judgment (% of dispositions by motion)	69 (28.0)	15 (10.4)	19 (18.8)	30 (12.5)	19 (9.5)	8 (11.1)	160 (16.0)
Motions to dismiss for failure to prosecute (% of dispositions by motion)	23 (9.3)	28 (19.4)	9 (8.9)	12 (5.0)	15 (7.5)	14 (19.4)	101 (10.1)
Motions for judgment on pleadings (% of dispositions by motion)	4 (1.6)	1 (0.7)	0 (0.0)	1 (0.4)	0 (0.0)	1 (1.4)	7 (0.7)
Motions for preliminary injunction (% of dispositions by motion)	4 (1.6)	8 (5.6)	1 (1.0)	6 (2.5)	2 (1.0)	0 (0.0)	21 (2.1)
Motions for summary judgment (% of dispositions by motion)	72 (29.3)	33 (22.9)	31 (30.7)	56 (23.3)	68 (34.0)	29 (40.3)	289 (28.8)
Motions for temporary restraining order (% of dispositions by motion)	0 (0.0)	5 (3.5)	0 (0.0)	6 (2.5)	2 (1.0)	0 (0.0)	13 (1.3)
<u>Sua sponte</u> dismissals on pleadings (% of dispositions by motion)	6 (2.4)	0 (0.0)	8 (7.9)	11 (4.6)	20 (10.0)	2 (2.8)	47 (4.7)
Removal petitions (% of dispositions by motion)	7 (2.8)	1 (0.7)	1 (1.0)	7 (2.9)	3 (1.5)	2 (2.8)	21 (2.1)
Other procedural motions (% of dispositions by motion)	4 (1.6)	2 (1.4)	3 (3.0)	3 (1.3)	1 (0.5)	1 (1.4)	14 (1.4)
Other motions (% of dispositions by motion)	4 (1.6)	1 (0.7)	1 (1.0)	2 (0.8)	0 (0.0)	1 (1.4)	9 (0.9)

TABLE 24
DISTRIBUTION OF PARTIAL DISPOSITIONS
BY MOTION TYPE

	<u>S.Fla.</u>	<u>Mass.</u>	<u>E.Pa.</u>	<u>C.Cal.</u>	<u>Md.</u>	<u>E.La.</u>	<u>All</u>
All cases	597	473	499	543	506	496	3,114
Motions that resulted in partial dispositions (% of all cases)	99 (16.6)	13 (2.7)	34 (6.8)	15 (2.8)	32 (6.3)	42 (8.5)	235 (7.5)
Motions to dismiss for:							
Lack of subject matter jurisdiction (% of partial disposition)	7 (7.1)	2 (15.4)	3 (8.8)	2 (13.3)	0 (0.0)	4 (9.5)	18 (7.7)
Lack of personal jurisdiction (% of partial disposition)	4 (4.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (2.4)	5 (2.1)
Improper venue (% of partial disposition)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (2.4)	1 (0.4)
Insufficiency of process or service of process (% of partial disposition)	2 (2.0)	0 (0.0)	1 (2.9)	1 (6.7)	0 (0.0)	0 (0.0)	4 (1.7)
Failure to state a claim (% of partial disposition)	14 (14.1)	2 (15.4)	7 (20.6)	2 (13.3)	6 (18.7)	4 (9.5)	35 (14.9)
Motions for default judgment (% of partial disposition)	46 (46.5)	5 (38.5)	9 (26.5)	3 (20.0)	7 (21.9)	3 (7.1)	73 (31.1)
Motions to dismiss for failure to prosecute (% of partial disposition)	6 (6.1)	1 (7.7)	0 (0.0)	1 (6.7)	1 (3.1)	9 (21.4)	18 (7.6)
Motions for judgment on pleadings (% of partial disposition)	0 (0.0)	0 (0.0)	0 (0.0)	1 (6.7)	1 (3.1)	0 (0.0)	2 (0.9)
Motions for preliminary injunction (% of partial disposition)	1 (1.0)	0 (0.0)	0 (0.0)	1 (6.7)	2 (6.3)	0 (0.0)	4 (1.7)
Motions for temporary restraining order (% of partial disposition)	2 (2.0)	1 (7.7)	1 (2.9)	0 (0.0)	0 (0.0)	0 (0.0)	4 (1.7)
Motions for summary judgment (% of partial disposition)	17 (17.2)	2 (15.4)	13 (38.2)	4 (26.7)	15 (46.9)	20 (47.6)	71 (30.2)

TABLE 25

CASES DISPOSED OF BY MOTION:
DISTRIBUTION BY AREA OF LITIGATION

	<u>S.Fla.</u>	<u>Mass.</u>	<u>E.Pa.</u>	<u>C.Cal.</u>	<u>Md.</u>	<u>E.La.</u>	<u>All</u>
Administrative appeal cases	8	12	12	26	24	9	91
Cases disposed of by motion	7	8	8	11	16	4	54
(% disposed of by motion)	(87.5)	(66.7)	(66.7)	(42.3)	(66.7)	(44.4)	(59.3)
Admiralty - Jones Act cases	107	64	61	19	48	289	588
Cases disposed of by motion	33	3	5	2	2	15	60
(% disposed of by motion)	(30.8)	(4.7)	(8.2)	(10.5)	(4.2)	(5.2)	(10.2)
Bankruptcy cases	2	1	2	12	1	1	19
Cases disposed of by motion	1	1	1	0	0	0	3
(% disposed of by motion)	(50.0)	(100.0)	(50.0)	(0.0)	(0.0)	(0.0)	(15.8)
Civil rights - constitutional law cases	29	37	37	38	39	23	203
Cases disposed of by motion	20	21	6	19	13	10	89
(% disposed of by motion)	(69.0)	(56.8)	(16.2)	(50.0)	(33.3)	(43.5)	(43.8)
Condemnation cases	31	2	1	0	1	0	35
Cases disposed of by motion	6	1	0	0	0	0	7
(% disposed of by motion)	(19.4)	(50.0)	(0.0)	(0.0)	(0.0)	(0.0)	(20.0)
Contract cases	102	83	103	76	81	37	482
Cases disposed of by motion	27	18	22	16	18	8	109
(% disposed of by motion)	(26.5)	(21.7)	(21.4)	(21.1)	(22.2)	(21.6)	(22.6)
ICC cases	21	8	7	5	4	3	48
Cases disposed of by motion	7	6	2	2	2	0	19
(% disposed of by motion)	(33.3)	(75.0)	(28.6)	(40.0)	(50.0)	(0.0)	(39.6)
Intellectual property cases	17	33	8	34	12	2	106
Cases disposed of by motion	3	3	0	1	1	0	8
(% disposed of by motion)	(17.6)	(9.1)	(0.0)	(2.9)	(8.3)	(0.0)	(7.5)
Labor cases	93	23	13	25	23	5	182
Cases disposed of by motion	36	8	6	6	4	1	61
(% disposed of by motion)	(38.7)	(34.8)	(46.2)	(24.0)	(17.4)	(20.0)	(33.5)
Prisoner cases	64	43	39	134	129	24	433
Cases disposed of by motion	59	30	29	131	115	19	383
(% disposed of by motion)	(92.2)	(69.8)	(74.4)	(97.8)	(89.1)	(79.2)	(88.5)
Securities cases	16	15	14	37	3	2	87
Cases disposed of by motion	5	2	0	2	1	0	10
(% disposed of by motion)	(31.3)	(13.3)	(0.0)	(5.4)	(33.3)	(0.0)	(11.5)
Seizures cases	4	5	3	20	6	0	38
Cases disposed of by motion	4	3	1	15	2	0	25
(% disposed of by motion)	(100.0)	(60.0)	(33.3)	(75.0)	(33.3)	(0.0)	(65.8)
Tax cases	13	9	6	8	11	2	49
Cases disposed of by motion	5	5	2	1	2	1	16
(% disposed of by motion)	(38.5)	(55.6)	(33.3)	(12.5)	(18.2)	(50.0)	(32.7)
Tort cases	52	88	168	39	86	55	498
Cases disposed of by motion	15	12	12	9	9	8	65
(% disposed of by motion)	(28.8)	(13.6)	(7.1)	(23.1)	(10.5)	(12.3)	(13.1)
Trade regulation cases	3	7	10	16	13	1	50
Cases disposed of by motion	0	1	1	3	2	0	7
(% disposed of by motion)	(0.0)	(14.3)	(10.0)	(18.7)	(15.4)	(0.0)	(14.0)
Other cases	35	43	15	54	25	33	205
Cases disposed of by motion	18	22	6	22	13	6	87
(% disposed of by motion)	(51.4)	(51.2)	(40.0)	(40.7)	(52.0)	(18.2)	(42.4)
Total cases	597	473	499	543	506	436	3,114
Cases disposed by motion	246	144	101	240	200	72	1,003
(% disposed by motion)	(41.2)	(30.4)	(20.2)	(44.2)	(39.5)	(14.5)	(32.2)

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